THE Public Interest

NUMBER 95, SPRING 1989, PRICE: $4.50

DISCARDED
RECEIVED
APR 2 6 1989
AXE LIBRARY
TTSBURG STATE UNIVERS

Of Dropouts and Stay-ins: The Gershwin Approach — *Jackson Toby*

The Day-Care Dilemma: A Scandinavian Perspective — *Alan Wolfe*

After Busing: Education and Choice — *David J. Armor*

Judicial Activism: Even on the Right, It's Wrong — *Lino A. Graglia*

Farm Policy Follies — *James Bovard*

Beyond the Savings-and-Loan Crisis — *David O. Beim*

The Mismanagement of Air Transport: A Supply-Side Analysis — *Robert W. Hahn & Randall S. Kroszner*

The Alcoholism Controversy — *William Madsen/ Herbert Fingarette*

"American Exceptionalism" Revisited: The Role of Civil Society — *Daniel Bell*

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

THE Public Interest

NUMBER 95, SPRING 1989

RECEIVED
APR 2 6 1989
AXE LIBRARY
TTSBURG STATE UNIVERS

CONTENTS

Of Dropouts and Stay-ins: The Gershwin Approach	*Jackson Toby*	3
The Day-Care Dilemma: A Scandinavian Perspective	*Alan Wolfe*	14
After Busing: Education and Choice	*David J. Armor*	24
"American Exceptionalism" Revisited: The Role of Civil Society	*Daniel Bell*	38
Judicial Activism: Even on the Right, It's Wrong	*Lino A. Graglia*	57
Farm Policy Follies	*James Bovard*	75
Beyond the Savings-and-Loan Crisis	*David O. Beim*	88
The Mismanagement of Air Transport: A Supply-Side Analysis	*Robert W. Hahn & Randall S. Kroszner*	100
The Alcoholism Controversy	*William Madsen/ Herbert Fingarette*	112
Current Reading		122
Contributors		13

THE PUBLIC INTEREST (ISSN-0033-3557) is published quarterly by National Affairs, Inc. and appears in Spring, Summer, Fall, and Winter issues. Its office of publication is located at 1112 16th Street, N.W., Suite 530, Washington, DC 20036. Subscription price: $18.00 for one year, $31.50 for two years, $45.00 for three years. Add $2.00 annually for Canadian and foreign subscriptions. Unsolicited material cannot be returned unless accompanied by sufficient return postage. Second-class postage is paid at Washington and at additional mailing offices. ©1989 by National Affairs, Inc. Postmaster: Please send all changes of address to *The Public Interest* Subscription Dept., P.O. Box 3000, Dept. PI, Denville, NJ 07834.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

Editors
Irving Kristol and Nathan Glazer

Publisher
Warren Demian Manshel

Publication Committee
Martin Feldstein
Harry Kahn
H. J. Kaplan
Glenn C. Loury
Harry McPherson
Daniel P. Moynihan
Leo Rosten
Martin E. Segal
Stanley Simon
Arthur L. Singer, Jr.
Roger Starr
James Q. Wilson

Managing Editor
Joel Schwartz

Assistant Managing Editor
Monica Powell

Assistant Editors
Caleb Nelson
Philip J. Costopoulos

Assistant to the Editors
Deborah Barrass

Associate Editor
Daniel Casse

Editorial Office
1112 16th Street, N.W., Suite 530
Washington, DC 20036

Subscription Department
The Public Interest
P.O. Box 3000
Dept. PI
Denville, NJ 07834

Newsstand Distributor
Bernhard DeBoer, Inc.
113 Centre St., Nutley, NJ 07110

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

Of dropouts and stay-ins: the Gershwin approach

JACKSON TOBY

IN 1922 Yale professor George S. Counts published one of the first scholarly studies of youngsters who left high school without graduating. He referred to them as "children of high school age not in school"; the word "dropout" had not yet been coined. Counts deplored his finding that the children of middle-class and native-born parents were more likely than the children of the poor and of immigrants to graduate from American public high schools. He probably felt, correctly, that poverty forced most of the dropouts of the first two decades of the twentieth century to leave school whether they wished to withdraw or not. Largely the children of immigrants, they took low-paid jobs to help support their families. In that era, less than one-fifth of all adolescents stayed in high school until graduation.

Today, however, it is widely believed that everyone should graduate from high school—and not too long after turning eighteen. As a result, "dropout" is now a pejorative in the United States. In the early twentieth century, less stigma was placed on adolescents who chose not to stay in school, but instead to leave school to work. The choice that adolescents then made could reflect a personal commitment, whether to further education or to employment.

The experience of the Gershwin brothers reflects these alternate commitments. George Gershwin left the High School of Commerce in May 1912, four months short of his sixteenth birthday, to take a

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

job as a song plugger on Tin Pan Alley. His brother Ira, by contrast, graduated from the most selective public high school in New York City, Townsend Harris Hall, and went on to the City College of New York. Their different paths, of course, converged in the field of popular music. The success of each ought still to be instructive to us, and should cause us to rethink our approach to the dropout problem.

Today's situation obviously differs from the one that confronted adolescents in the Gershwins' era. Most American adolescents now graduate from high school, unlike their counterparts of three generations ago. Those who drop out, although still disproportionately from poor families, are no longer motivated primarily by poverty. The existence of a welfare safety net that includes Aid to Families with Dependent Children (AFDC), Medicaid, food stamps, and Supplemental Security Income has reduced the financial pressure on the children of poor families to leave school. Indeed, there are often financial reasons for youngsters to remain enrolled. Between the ages of sixteen and twenty-one, children of AFDC families are eligible for benefits if they are enrolled in school, but not if they have dropped out. Similarly, in calculating a family's eligibility for benefits the Social Security Act excludes the part-time earnings of dependent children enrolled in school. As interviews with dropouts consistently confirm, most school dropouts leave the system because they lack interest in what the schools are designed to teach.

Dropouts in other lands

In the United States the word "dropout" carries stigma; that is, it evokes disapproval and pity. Especially in big-city school districts with large minority enrollments, administrators have become increasingly frantic about symptoms of student apathy: absenteeism, class cutting, and dropping out altogether.

Even in communities with low dropout rates, principals are concerned about dropouts. They want *every* student to remain in school until graduation and will do almost anything to cajole students to do so if they appear to be at risk of dropping out. For example, in 1987 the principal of a middle-class New Jersey high school (from which more than 95 percent of the students graduate) obtained a federal grant of $108,000, which he used to pay marginal students to stay in school. Each of the 130 students identified as a potential dropout was offered a $25-a-week reward for acceptable behavior. In order to earn the money, students were expected to attend every day, to be on time, to do the assigned homework, and to bring books and writing implements to class. Only seventy accepted the chal-

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

lenge in 1987-1988, and each week fewer than half actually earned the $25.

The American desperation about "dropouts" is not shared by all developed countries. Consider Sweden and Japan, countries at least as committed to education as the United States. There is no Swedish word for "dropout." The closest term is literally translated as "school-tired." The implicit assumption is that youngsters who get tired of school need a rest. Consequently it is acceptable for Swedish secondary-school students to withdraw from school for a semester or so to recuperate. The Swedish attitude is not very different from the American attitude toward college students who wish to take time off to clarify their goals. Swedes expect most tired students to return to school eventually; not only Swedes but Scandinavians in general treat education as a lifetime activity. Many Scandinavians start work before completing their educations and return to school later, usually part-time.

Unlike the Swedish language, Japanese does have a word for "dropout," but dropouts are rare in Japan. Nonetheless, schooling there is compulsory only through ninth grade, and both public and private high schools charge tuition. A family with a child in a public high school spends about 5 percent of its income on school expenses; the figure for private high schools is 10 percent. Japanese families often incur additional expenses to educate their children, because a substantial minority of Japanese high school students—perhaps a third—attend private tutoring sessions after school and on weekends.

The Japanese assume that school is a full-time, six-day-a-week, ten-month-a-year task for young people. Students are expected to study extremely hard by American standards, because they and their parents believe that their futures depend on graduating not merely from high school but from a *good* high school. A good high school is one that can prepare students for admission to the most selective universities. Prestigious high schools select entering students by competitive examinations; on the basis of these examinations, students are admitted or rejected by the high schools of their choice. Some students refuse admission to lesser high schools, choosing instead to study for an additional year and retake the examinations after diligent private work. In Japan, then, an important type of dropping out actually reflects a commitment to high educational achievement.

Few Japanese youngsters fail to go to high school or leave it to enter the labor force. These few, however, are expected to (and do)

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

find jobs, although not very good ones. In Japan, adults and children alike understand that educational achievement leads to occupational success. That is one reason why 94 percent of junior high school graduates attend high school, and 88 percent of them complete it.

Reconsidering universal high school education

It is easy to see why Americans today believe that everyone should graduate from high school at age eighteen, despite the success of a George Gershwin. If Gershwin were starting out today as a fifteen-year-old dropout, he might not manage to become a song plugger and to gain needed musical experience. Social norms and child-labor laws have changed. Americans now tend to think that the place of teenagers is in school, not at a full-time job.

Furthermore, one can concede that George Gershwin should not have been pressured to remain in high school (and that American popular music would have been worse off if he had been) without wanting to legitimize dropping out. This is because George Gershwin had exceptional talent and a pretty good idea of what he wanted to do with his life. That a genius can realize his potential without formal education, it could be argued, does not mean that the great majority of youngsters can afford to follow his example. On the other hand, successful dropouts are by no means unique; they include not only film stars like Clark Gable and professional athletes like Muhammad Ali, but also many entrepreneurs, such as Marion Isbell, the founder of the Ramada Inn motel chain. As long as some dropouts do conspicuously well, however atypical they may be, youngsters who dislike school will not believe that a high school dropout is necessarily doomed to dead-end jobs or a life of crime.

Of course, potential Gershwins who leave high school in order to pursue some special interest are far different from youngsters who drop out of school without *any* goals, academic or nonacademic. When aimless youngsters leave high school, they do not leave for a job on Tin Pan Alley—or even to work at McDonald's—but to hang out on street corners, perhaps selling crack, smoking it, or both. For this reason, many people believe that it is best to bribe such youngsters to stay in school for their own good, or to force them to stay by raising the statutory age for compulsory school attendance. At least school will keep them off the streets, and it may even make them minimally literate.

Seductive as this line of reasoning is, it is ultimately unpersuasive, because it fails to recognize that education depends on cooperation between students and teachers. When children are young,

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

such cooperation is commonplace, especially when their parents believe in education and encourage effort. But teenagers pose a bigger problem. The best way to obtain their cooperation is to convince them that education is worthwhile. That is the secret of Japanese schools. Japanese adolescents willingly work long and hard in high school, because they believe that their future depends on educational achievement.

The stay-in problem

Some years ago, when interviewing Joe, a young inmate in a New Jersey reformatory, I asked him about his school experiences. "I liked school," he said.

I was surprised. Most of the delinquents I had known hated school and did poorly in their schoolwork. "What did you like about it?" I asked. He told me about sitting in the lunchroom with his gang and having food fights, about "making out" in the halls with his girlfriends, about smoking in the boys' room, about harassing a young, inexperienced teacher so much that she left teaching the following year. "What about your classes?" I asked. "Did you like them?"

"Yeah," he replied. "I liked gym." I persisted. Did he like English, math, or anything else in the curriculum? "No," he replied, smiling. "They weren't in *my* curriculum."

Joe wasn't a dropout. But from the point of view of the other students in the school that he attended before his arrest for car theft, it might have been better if he *had* dropped out. He stayed in simply because his high school made negligible academic demands upon him. He never did any homework. He frequently cut classes. He skipped school when he felt that there was something more important to do. In short, he stayed in for the wrong reasons. One Joe in a high school is bearable. However, when the Joes constitute a constituency to be reckoned with, schools have a "stay-in" problem.

In inner-city neighborhoods, this happens almost as a matter of course. Children living in female-headed households supported by public welfare are not necessarily uninterested in school. But research shows that parental encouragement has a powerful effect on educational performance and aspiration, and youthful unwed mothers, preoccupied with their own problems, rarely encourage their children to do well in school—much less help them with homework. Such children suffer from a second handicap: their friends too are likely to be uninterested in school. Without parental or peer support for learning, these adolescents are as likely to curse and threaten teachers and other students as to study.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

Maybe it is understandable when they drift into crime, promiscuity, and drug and alcohol abuse. But what are teachers and principals to do about it? One inner-city principal decided that apathetic or hostile adolescents should not be permitted to distract the real students. In December 1987 Joe Clark, principal of Eastside High School in Paterson, New Jersey, suspended sixty students who, according to Clark, had been in high school for four or five years, were not attending classes regularly, and had no hope of graduating. Some were more interested in drugs than in history or English. "I'm tired of parasites . . . who don't want to better themselves," said Clark. "Go out and get a job." Clark had the support of most Eastside students, but the Paterson Board of Education and the press considered his action high-handed.

The stay-in problem is a chronic challenge to inner-city schools, but suburban schools also have youngsters who have become "school tired." One response to stay-ins in both types of schools is to degrade the curriculum by emphasizing entertainment. Courses that are peripheral to the central academic mission of school have proliferated, covering such subjects as driver education, science fiction, and pottery making. Well-taught, such courses might help interest students in reading and writing. But that would require making serious intellectual demands on students, including the Joes—something schools are afraid to do. The bottom line is that the desire to keep students enrolled leads schools to offer courses, and especially electives, that have precious little educational value for anybody.

When New Jersey Governor Thomas Kean proposed in his January 1989 State of the State address that the legislation requiring two and one-half hours of physical education a week be amended, he was addressing an aspect of this problem. Governor Kean thought it reasonable to allow local school boards to schedule gym as often as they saw fit—or even to make gym an elective. "We require as much phys. ed. as English and more than math, science, art, and history," the Governor said. Furthermore, Department of Education studies showed that given the time consumed by changing clothes, the amount of exercise during physical education classes was not contributing much to youth fitness. To the Governor's surprise, Senator Matthew Feldman, Chairman of the State Senate Education Committee, protested: "In inner-city neighborhoods, a day without physical education will trigger an exodus from our high schools."

Senator Feldman wanted to cater to school-tired stay-ins in order to hold down the dropout rate, without much consideration of the consequences for students more receptive to learning. Aside from

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

the academic consequences, the presence of students like Joe in schools increases the levels of violence, drug abuse, theft, and general disruption. A decade ago the Safe Schools Study, a national survey of violence and vandalism in 642 public secondary schools, demonstrated that schools with above-average proportions of academically uninterested students were also schools with high rates of attacks against teachers and students.

Such a correlation between poor academic performance and school violence does not, by itself, prove causation. It might be that kids from poor neighborhoods or from racial and ethnic minorities make schools dangerous. But excellent and safe schools can be found in such neighborhoods despite minority clienteles. Dunbar High School in Washington, D.C., for example, had high academic standards between 1870 and 1955, even though its students were black children whose tested aptitudes and economic circumstances were modest. During that period Dunbar sent the majority of its graduates on to college. Its alumni included the first black Cabinet member, a United States Senator, and distinguished judges. What was Dunbar's secret? Students chose to attend it, attracted by its reputation and willing to conform to its stringent curricular requirements. In 1955, however, Dunbar stopped recruiting students from all over the Washington metropolitan area, and instead enrolled local students regardless of whether they wanted to attend. Dunbar soon developed the disciplinary and academic problems that might be expected in a school serving a population on the lowest socioeconomic level in America.

It is not where students come from that determines the climate of a school, but how hard they are willing to work and what they aim to do.

Mistaking the symptom for the cause

The implications of this logic horrify most Americans: in order for schools to be safer and more concerned with education, some kids *ought* to drop out. Those who are horrified fear that dropping out leads to drug abuse and criminality. Studies, after all, show a higher incidence of many types of antisocial behavior among dropouts than among high school graduates. But dropping out may simply be a symptom of deeper, pre-existing problems that lead independently to unemployment, drug abuse, and crime. The evidence is that dropping out of school has less serious consequences than is generally believed.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

Two excellent studies—one a national study conducted by the Survey Research Center at the University of Michigan, the other a California study—tracked youngsters for four years, beginning when they started the ninth grade. Whether they dropped out during those four years or remained in school until graduation, they were monitored carefully. In one study, official arrest records and self-reported crimes were tabulated; in the other, only self-reported offenses. The dropouts did indeed have higher delinquency rates than the graduates. But their antisocial behavior began long before they dropped out. In the national study, their delinquency rates did not increase after they dropped out; in the California study, delinquency actually declined somewhat after the students left. On the other hand, delinquency rates for students who stayed in school *until graduation actually rose over the four years.*

These findings are buttressed by the fact that arrests of juvenile offenders are not appreciably greater during the summer or other holiday periods than when schools are in session. America would probably not experience a crime epidemic even if the dropout rate increased.

The George and Ira Gershwin approach

Although George Gershwin did not follow his brother's path of academic achievement, he did pursue excellence. Leaving school early did not cause him to think of himself as a failure, and his family neither pitied nor condemned him. He and Ira set high standards for the transition from childhood to adulthood, but they did not suppose that going to school continuously was the sole way to make that transition. In the tradition of George and Ira Gershwin, I favor giving fifteen-year-olds the responsibility for choosing between really studying in a real school and doing something else, like working.

A school counsellor should say something like this to a prospective dropout: "You probably ought to stay in school and learn what you have to learn in order to get a fulfilling job and to be a good citizen. But I understand that students can get awfully tired of school. And a few, a very few, might be able to make it in the world without a high school education. Okay, withdraw for the time being, but keep in touch. Let us help you with job referrals and counselling—and maybe with part-time courses when you want them. If you make it, great. If you eventually decide that you want to come back to school full-time, no sweat. The door will be wide open for you—even in the middle of a semester."

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

There is one catch. Schools have to be able to give good educations. And in order for schools to do so, students must work hard. They must attend regularly, do homework, and pay attention in class. Those who balk at making prospective dropouts choose between a more onerous school experience than they now have and leaving school altogether should keep in mind that students would make the choice in consultation with parents or other relatives. Most families, even pretty demoralized ones, would urge children to stay in school when offered a clear choice. The problem today is that many families don't get a clear choice; the schools attended by their children unprotestingly accept tardiness, class cutting, inattention in class, and truancy. A child can drop out of such a school psychologically, unbeknownst to his family, because enrollment doesn't even mean regular attendance. In effect, prospective dropouts choose whether to fool around inside school or outside school. That is why making schools tougher academically, with substantial amounts of homework, might have the paradoxical effect of persuading a higher proportion of families to encourage their kids to opt for an education.

But what are the risks? If high school attendance were up to students and their families, how high would the dropout rate go? No one knows for sure, but there are clues suggesting that it would not increase much. Professor James Coleman and his colleagues demonstrated in their "High School and Beyond" study of a thousand American high schools that students were less likely to drop out of Catholic schools than out of public high schools, even though the Catholic schools had stricter academic and behavioral requirements. It is possible that the Catholic schools attracted better students to begin with, but Coleman's analysis showed that the dropout rate was lower in Catholic schools than in public schools for youngsters with comparable socioeconomic characteristics, including minority youngsters. Surprisingly, it appears that schools where anything goes are not the schools that kids want to attend.

Another clue is the effect of various school-attendance laws. Five states (Arkansas, Louisiana, Maine, Mississippi, and Washington) require attendance only until age fifteen or less; four states (Hawaii, Ohio, Oregon, and Utah) require attendance until age eighteen or high school graduation; most other states require attendance until age sixteen. If legal compulsion were decisive, sixteen- and seventeen-year-olds ought to be much less likely to attend school in Washington than in Hawaii. In fact, the variation in attendance for sixteen- and seventeen-year-olds is small· on average,

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

only 5 percent more of the age cohort remains in school in states in which attendance is mandated for older students. Apparently, most kids go to school not because the law makes them but because they, their parents, and their friends value education. If so, making high schools more demanding and letting students choose whether to attend will drive away only a few students—whom the schools are well rid of anyway.

One virtue of the Gershwin approach is that a bad choice is less likely to be irrevocable than under present circumstances. Dropouts will not have burned their bridges. They will be treated as presumptive returnees and therefore as quasi-members of the school community who might benefit from school services. Even George Gershwin might have benefited from an evening course in music theory at his high school. The more usual dropout might need help in preparing for job interviews, or in learning how to cope with problems that arise on the job. Open lines of communication would increase the likelihood that dropouts would return to school if their dreams failed to come true.

Another advantage of the Gershwin approach is that it can only raise the academic performance of high school students. The low academic standards of American schools are a national disgrace; they were revealed anew in a recent report showing how poorly the math and science knowledge of American thirteen-year-olds compares with that of adolescents in Korea, Canada, Spain, the United Kingdom, and Ireland. Raising academic standards appreciably, however, is not feasible without simultaneously legitimating dropping out. Otherwise, schools would be either failing to enforce their standards or stigmatizing and irrevocably banishing students who are unwilling or unable to be diligent. The Gershwin approach avoids both horns of this dilemma.

When George Gershwin's name is mentioned, the last association that comes to mind is "high school dropout." But what about fifteen-year-old kids who *wrongly* think they are like George Gershwin? In the face of an unrealistic dream, American society should say, "Pursue excellence in the field that attracts you. If acting, sports, or business doesn't work out for you, come back to school and give yourself a second chance." This strategy is best because no one knows in advance who will profit more from formal education than from other endeavors. In addition, our national preoccupation with getting everyone through high school is wrecking the educational system, especially in inner-city neighborhoods—where good schools can save kids from catastrophe.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

Even today, there are good schools, but they are suburban schools, private schools, and selective public schools. Efforts to prevent dropping out at all costs condemn children who attend inner-city high schools to an education that is form without substance. The Gershwin approach is more democratic; it dares to insist that all high schools should be excellent.

CONTRIBUTORS

DAVID J. ARMOR is principal deputy assistant secretary of defense for force management and personnel. Formerly he was associate professor of sociology at Harvard University and served as a member of the Los Angeles Board of Education.

DAVID O. BEIM is a managing director at Dillon, Read & Company, an investment banking firm in New York City.

DANIEL BELL is Henry Ford II Professor of Social Sciences at Harvard University.

JAMES BOVARD is the author of *The Farm Fiasco*, to be published this spring by ICS Press.

LINO A. GRAGLIA is A. Dalton Cross Professor of Law at the University of Texas School of Law.

ROBERT W. HAHN is a senior staff economist at the Council of Economic Advisers and associate professor of economics at Carnegie-Mellon University. RANDALL S. KROSZNER is a Ph.D. candidate in economics at Harvard University. Their article does not necessarily reflect the views of the Council of Economic Advisers.

JACKSON TOBY is professor of sociology and director of the Institute for Criminological Research at Rutgers University.

ALAN WOLFE is professor of sociology at Queens College. Last year he was a visiting professor of political science at the University of Aarhus in Denmark.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

The day-care dilemma: a Scandinavian perspective

ALAN WOLFE

EVER SINCE Richard Nixon vetoed the Comprehensive Child Development Act of 1971, day care had been off the agenda for public discussion in the United States. But now, through one of those processes that nobody really understands, the issue has resurfaced. The economic realities facing American families turned out to be more powerful than Norman Rockwell images and antifeminist backlashes. It is not clear exactly what kind of day-care proposals will emerge from the Bush administration, but that some kind will seems almost beyond dispute.

As in so many areas of social policy, the United States is an exception when it comes to day care: hopelessly "behind" in the eyes of reformers, morally "purer" in the eyes of those who equate housewifery with God's will. Now that the United States government seems about to wrestle with the same kinds of dilemmas that other governments have been facing for decades, the experiences of those others are worth recounting.

Nowhere is the public commitment to child care more extensive than in Scandinavia. Although Norway is something of an exception—women there are more likely to work only part-time, to use day care only part-time, or to hire relatives to watch their children—Sweden and Denmark have both committed themselves to providing

This article is adapted from the author's book, Whose Keeper?: Social Science and Moral Obligation, *forthcoming from the University of California Press.*

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

full-time institutional care for children from the age of three months until they begin school (typically at age seven).

According to a recent study by the quasi-official Social Research Institute of Denmark, only 5 percent of Danish children under the age of six are being raised full-time by their mothers at home; fewer than 20 percent are being watched at home by working parents on shifts, mothers on pregnancy leave, unemployed parents, or parents who work at home. Twenty-one percent are in private day care and 55 percent are in public day care. In Sweden fewer children are in public day care, in part because of more generous maternity leaves. (The Swedish Social Democrats recently committed themselves to full maternity benefits for eighteen months, a policy that would greatly lower reliance on public day care for infants.) In addition, the Swedish government (and to a lesser extent the Danish government) pays mothers to take in the children of others. About a third of Swedish children remain at home with their mothers, but that minority will probably continue to shrink.

Those who would like to see government play a greater role in the provision of child care find Scandinavia exemplary. After a recent trip, *New York Times* journalist Fred M. Hechinger wrote of Denmark as previous generations of tourists wrote of Russia or Cuba: "If there is a children's paradise," he gushed, "look for it in Denmark. You hardly ever hear a child cry. No research is needed to prove the link between happy children and decent adults."

If Hechinger's description sounds a bit too good to be true—my own children cried about as much during our year in Denmark as they did in Westchester County the year before—it is because no society has found an equitable way of balancing obligations to the present generation with obligations to future generations. Enthusiasts for public day care rightly point out that there are few latchkey children in Scandinavia, and that children in day care are better nourished and more self-sufficient than children who stay at home. If the American and Scandinavian ways of raising children were the only ones from which to choose, the latter would be preferable by most criteria. Yet one should never forget, especially when turning to Scandinavia for lessons relevant to America, that public day care is provided primarily to serve parents and only secondarily to serve children.

The evolution of a second welfare state

Family policy in the Scandinavian welfare states first received international attention because of child allowances—direct cash

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

payments to all mothers for each child they bore, lasting in some cases until the child reached the age of twenty. Child allowances, although they were planned as universal benefits, are otherwise similar to "voucher" schemes advanced in the United States; families—usually women, for the checks are made out to mothers—can spend the money as they please.

Although still in existence, family allowances are no longer as important as they once were. Exceptions to universalization have crept in, especially in Denmark, and fiscal limits have appeared, especially in Norway. Yet even though spending on child allowances has decreased, overall expenditures on family programs have increased; in Sweden they doubled as a percentage of GNP between 1960 and 1980. Expenditures on public day care make up the difference. In 1960, 32 percent of all family welfare expenditures in Denmark (and 55 percent in Sweden) went to child allowances, while only 14 percent (none in Sweden) were devoted to day care. By 1984 all that had changed. Child allowances constituted only about 15 percent of family welfare expenditures in both countries, while day-care funding accounted for roughly half.

Over the last twenty years Scandinavia has created a *second* welfare state. In the first welfare state, government provided financial help to families; in the second welfare state, government has begun to carry out some of the functions of families.

Early theorists of social democracy assumed that women would stay home while men worked; as late as the 1960s, campaign posters for the Danish Social Democratic Party showed a wife, baby on shoulder, waving goodbye to her now economically secure husband. Radical innovations in the nature of the state were accompanied by culturally conservative attitudes toward the family.

The industrial working class has shrunk, however; the Social Democratic parties have found it increasingly hard to form majorities. Social Democrats have replaced the lost votes of the industrial working class with strong support from women, who are far more likely to vote to the left than men. Women routinely support welfare programs more than men. In Scandinavia, women have entered politics to a greater degree than anywhere else in the world, despite the fact that Scandinavian societies still show a remarkable degree of gender segregation in job choice. (In Norway, for example, 66 percent of social workers, 93 percent of nurses, and 98 percent of home helpers are women.) Studies of trends in Norway project that by the year 2000 most politicians will be women. As its political base shifts from the industrial working class to working women, social demo-

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

cracy becomes a movement to guarantee equality between the sexes as it once was a movement to guarantee equality between the classes.

Day care's effect on children

The growth of a second welfare state—combined with levels of family instability that are among the highest in the world—has recreated childhood. "Growing up post-modern," as Swedish psychologist Lars Dencik calls it, involves living with adults, one of whom is likely not to be one's biological parent; having step-siblings as often as one has siblings, and having few of either in any case; spending most of the day, from a very early age until the start of school, in a public day-care institution; having only weak ties to friends and neighbors (children, even very small ones, tend to have "play colleagues," not friends); maturing extremely quickly; and learning self-control above all.

There is little doubt that the second welfare state is, in the words of Norwegian feminist Helga Hernes, "woman friendly." Public day care, in particular, has enabled Scandinavian women to participate more actively in politics and in the workforce. The question is whether such an extensive system of public support for families is "child friendly." There is no unambiguous answer to the question of whether extensive public day care is better for children than the "traditional" family. (In Scandinavia, as in the United States, a family pattern in which women stayed home and took care of the children is the historical exception, not the rule.) Bengt-Erik Andersson, a Swedish educational psychologist, carried out a longitudinal study of 119 Stockholm and Gothenberg children from their first to their eighth years. He found that age of entry into public day care was a consistent predictor of success later on: children who began attending day care earlier fared better when they reached school.

Andersson and Lars Dencik (who has studied the lives of small children in Scandinavia) both conclude that the day-care system works well. Yet the matter is far from settled. A governmental commission on the status of children in Denmark, contradicting more optimistic studies, wrote in 1981 of a "closed child's world" cut off from adult life. Echoing that report, the National Association of School Psychologists found:

> It is becoming more common that children who are beginning school are antisocial, loud, and confused. They are uncertain, unhappy, and badly in need of contact. They do not have the awareness that early beginners in school once had and they are missing moral conceptions. They have no respect for elders and are untrained in using their body and their hands.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

Many are passive or aggressive and they do not understand ordinary reprimands.

Ultimately, however, no amount of empirical research can resolve all the questions about day care, many of which are ideological. And even if the experts unanimously supported day care, nearly all Scandinavians—especially women—would still feel guilty about relying extensively on government to watch their children for them. Most people know that specific children have specific needs, and that parents are in the best position to know what those needs are.

Even in an ideal world, where parents could be sure that the strangers who cared for their children nonetheless loved them as their own and spared no expense in helping them, leaving one's children in the care of others would probably still cause guilt. And the Scandinavian system, although the most generous in the world, is far from ideal. Even though Swedish taxpayers pay approximately $10,000 per year for every child in public day care, a series of problems plagues day-care institutions—nearly all of them having to do with money.

Conflicts of equity and obligation

It is not hard to ensure equity when government redistributes money, as in the system of child allowances. Those who are eligible simply receive a check for the same amount per child, regardless of need. It is much harder to be equitable when allocating services. Waiting lists abound for public day care in Scandinavia. In Denmark, which has the most extensive system of institutionalized care, two-thirds of the counties have waiting lists. A child growing up in Aalborg may not obtain a place in public day care until it is too late to use it. Rural areas (in Norway, for example) tend to have longer waiting lists than urban areas.

The most serious distributional imbalances, however, are not geographical but class-related. Middle-class people in all three Scandinavian countries rely on public day care more than working-class people. Day-care centers are open only during the day, making them unavailable for those who work nights and weekends. They are often not trusted by immigrant men, who are afraid that their children will become assimilated and their wives more conversant with their rights. Middle-class users know how to gain and keep access to public day-care institutions and are far better organized to take advantage of available services than working-class users.

As a result of these trends, the moral solidarity of the welfare state is cracking, if only slightly. Rather than symbolizing equal

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

treatment for all and fostering collectivity, public day care reinforces the growing tendency of individuals in welfare states to calculate which programs provide enough benefits to compensate for the taxes imposed. Using day care is a primary way in which middle-class people use the state to hire others to perform tasks they once did themselves.

A second series of problems faces those who overcome waiting lists and obtain places for their children. Bengt-Erik Andersson's study emphasized that good day care can work well. Not all public day care is good, however. The most serious problem is the high rate of job turnover in day-care institutions. Many of the day-care workers are young women who have recently joined the labor force and are willing, therefore, to put up with the low pay. They leave when marriage or a new job beckons. If a child enters a day-care center at age three (all the Scandinavian countries have separate institutions for those under three and those over), it is likely that all the original workers will have left by the time the child starts school. The only way to correct this problem is to increase the pay and status of day-care work, but given fiscal constraints, that would decrease the availability of day care.

"Good" day care also falls victim to bureaucratization. Nothing horrifies Scandinavians more than the stories of child abuse coming from the United States, where day care is poorly regulated. (For that reason alone, the Scandinavian system is superior.) But over-regulation can also cause problems. Government provision of a service comes complete with relatively inflexible rules, an overemphasis on procedures, and discussions framed by an emphasis on rights, often to the exclusion of obligations.

Many day-care workers are mothers of small children. These women are often idealistic and caring—I have no complaints about those who watched my own kids—but they tend toward the left politically and are highly aware of their trade-union benefits. Insistent on their rights—such as periodic vacations, routine coffee breaks, and regular working hours—they often feel torn between solidarity to their colleagues and concern for the children in their care. Women who raise children at home must balance their obligation to themselves with their obligation to their children. Women who raise the children of others as a career have far more obligations to balance: to themselves, to their colleagues, to their own children, and to the children they are watching. As obligations proliferate, the children's needs may get lost in the shuffle.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

Providing service and restricting choices

If there is a consensus among the experts on children in the Scandinavian countries, it runs as follows: public day care can help build a child's healthy feelings of autonomy—but only if care is limited to about twenty hours a week. Less than that, and children become withdrawn. More, and they tend to become aggressive. Common sense, then, would suggest that children spend part of their time in public day-care facilities, and that parents work only part-time when their children are small.

Common sense, however, has not won out. Part of the reason is economic. Rapidly changing economic conditions have made it enormously difficult for Scandinavians *not* to exercise their right to full-time day care. Inflation and tax rates of 50 percent or more have combined to decrease the typical family's ability to live on one or one and one-half incomes. Knowing that day care is available makes it possible for employers to keep wages down, for the state to keep taxes up, and for husbands to encourage their wives to work without taking on additional child-care responsibilities themselves. As a result, most couples have little choice but to work full-time and send their children to day care.

In addition, the bureaucratization of a public service like day care makes it difficult to accommodate part-time users. Part-time work tends to be opposed by many women's organizations, which are committed to the idea of full equality for women in the labor market. Day-care workers themselves, who might prefer part-time work in order to take care of their own children, support full-time work to protect the integrity of their jobs. Once day care is brought into the public sector, with its strong unions and firm rules, it loses much of its flexibility. Efforts by parents to play a greater role in the governance of day-care centers, for example, are often opposed by a variety of entrenched interests. In Sweden cooperative or voluntary efforts at day care are almost nonexistent, because of a Social Democratic distrust of anything that smacks of private charity or voluntarism.

Scandinavians are not fed up with their experiment, and they have not taken to voting for right-wing politicians—although in Denmark and Norway conservative parties are growing. Nearly all studies of public opinion indicate continued support for the welfare state in general and for public day care in particular. But subtle shifts have taken place. Instead of arguing that day care is a positive good, recent research suggests that it does no harm. Surveys indicate that women want to work part-time when their children are very

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

small. In Denmark, where there is less part-time work for women than in the other two Scandinavian countries, parents simply find ways to pick up their children from public day care at 3:30 p.m. (Periodic checks of Danish day-care centers, including the one that watched my own children, found them empty by 4 p.m.; not only the children, but also much of the staff—who have children of their own—had already gone home.) Whatever the official policy may be, most Danes seem to recognize that rules ought to be bent when parents have young children. Day care, in short, is an imperfect solution to the conflict between the needs of parents and those of their young children. Given one goal—equality between the sexes in the workplace—Scandinavians support public day care. Given another—doing what is best for their own children—they try to find ways to limit their reliance upon it.

Service for "the harried leisure class"

One of Sweden's most respected economists, Staffan B. Linder (author of a recent polemic describing the second welfare state as "heartless"), once wrote a book called *The Harried Leisure Class*. The book resonates particularly well with workaholic yuppies, but it describes trends that affect most Scandinavians. The welfare state has contributed to greater prosperity and a closer approximation of the good life, yet a variety of studies in all the Scandinavian countries indicates that people are working longer hours than ever before. Scandinavians lead busy lives. Both parents have jobs. Store hours in Denmark and Norway are highly restricted, and so most Scandinavians must do all their shopping in the last half hour of the day or in three hours on Saturday morning. And even though Scandinavians now have fewer children, they still have some, whose needs must be met as well.

Scandinavians may well prefer the harried family to the traditional family, in which one wage earner—the man—possesses most of the power. But it is still far short of paradise. The pressures of work and family life make nearly everyone touchy and make feeling guilty a national pastime. It is within this context that public day care needs to be understood; it is a policy put forward in the interests of busy parents, not of children. Despite the claims of the 1981 report of the Danish Commission on the Status of Children, the problem is not that a new sort of child has been created; it is rather, as Copenhagen child psychologist Søren Surland has put it, the emergence of a new sort of adult. Fathers have always spent too little time with their children. Now mothers have joined them. The state has filled in because somebody has to watch children when everyone else is busy.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

Recognizing that public day care has been advanced in the interest of parents would help to improve it. So long as people assume that children will be better off because of public day care, they will be likely to rely upon it too much. But the dissatisfaction and guilt felt by many Scandinavian parents indicate that parents would like to devote more time to their children; they realize that government ought to support families but not replace them.

How should Scandinavians reform their day-care policies? Berkeley professor Neil Gilbert, a close observer of the welfare state in both the United States and Scandinavia, has suggested that the period when parents have small children ought to be viewed as a special phase in the life cycle. Parents who stay home serve not only their own children, but society as well, by reducing the cost to others. Such parents ought therefore to be given credit. Gilbert suggests that mothers who raise their own children could be given preferential treatment when applying for civil-service employment after their children have grown older, or perhaps advanced standing at educational institutions. In Scandinavian societies, proposals have been advanced, usually by the more conservative and religious parties, to pay mothers who choose to stay home with their own children, since almost any such program would cost less than public day care.

Nearly all of these proposals are opposed by unions, women's organizations, and the Social Democratic parties. The logic of the modern welfare state stresses universalization and equality; it is consequently reluctant to admit the need for exceptions. Given these political realities, reforms are more likely to come in the form of new targeted benefits, such as extended parental leave. An eighteen-month parental-leave policy, at full pay with job guarantees, would enable parents to stay at home with their infants without sacrificing their careers.

Once parental careers become the focus of public-policy debates, the nature of reform changes. It becomes possible—only in Scandinavia, one must add, not in America—to propose that the parents of small children are entitled to be paid for two jobs while working at only one and one-half. Governmental wage supplements would let couples decide for themselves how to allocate their responsibilities. Each parent could work three-quarter time while the children were young, or one could work full-time and the other half. It would even be possible for one to work time and a half while the other stayed home. Government would insure that families were paid the equivalent of two incomes—since families with small children tend

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

to have high expenses—while leaving parents enough time to rely on public day care only twenty hours a week and to care for their children the rest of time. At the same time, struggles over gender roles would be left to individual wives and husbands, since they would have to negotiate their own agreements about who is to spend more time with the children. Most important, the wage-supplement program, while expensive, would probably cost less than the universal provision of public child care for all preschool children more than three months old.

Lessons for the U.S.

Americans can benefit from what the Norwegian-American social critic Thorstein Veblen once called the advantages of backwardness. At the dawn of the industrial age, capitalists in England built factories whose designs were later copied by Americans. American planners reaped the advantages of being second, by learning from England's mistakes. In the field of public day care, America is once again backward; and so we can learn from the errors of the Scandinavians.

America has not yet made any serious public commitment to day care, relying instead upon a hodgepodge of solutions that is worse than Scandinavian programs for both parents and children. But patterns of American family life have changed; two-career families are here to stay. There is a positive role for government to play in offsetting the costs of the change.

It is clearly unwise, however, to turn the problem of raising the children of two-career families entirely over to government. In dealing with the intimate concerns of family life, strict rules and bureaucratic procedures work less well than intuition, common sense, and flexibility. Part-time work may conflict with the goal of equal pay for women, but it makes sense for children. Voucher schemes—which the Bush administration is likely to propose—should be designed to give parents flexibility. User fees for public day-care are not inappropriate; those who have resources ought to pay more so that those who lack resources can benefit.

There is little chance, given American conservatism and the limits on our fiscal resources, that we will soon establish a system of universal day care subsidized by government. Instead of bemoaning that fact as evidence of backwardness, we Americans ought instead to appreciate the advantages that being backward provides. A society that loves children will use the state to provide for them, but will also allow parents the time to be with them.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

After busing: education and choice

DAVID J. ARMOR

UNLIKE OTHER school reforms, most efforts at desegregation have ignored pedagogy and curricula. It is therefore not surprising that racial-balance programs have largely failed to achieve their ultimate educational goal: to improve the academic performance of minority students. Nonetheless, they have had a greater impact on American education than any other reform of the past twenty years.

Desegregation has significantly changed the way in which schools are organized, and particularly how students and teachers are assigned to schools. The greatest changes resulted from the imposition of mandatory busing during the 1970s, when thousands of parents in dozens of cities learned for the first time that they had no right to use their neighborhood schools.

Mandatory busing has had two unanticipated consequences. Its immediate effect was to drive white students to suburban and private schools, often hastening resegregation by exacerbating existing demographic trends—a process known colloquially as "white flight." This essay, however, deals with the second and more recent impact of mandatory busing—the successful re-emergence of "choice" programs, and especially magnet schools. Unlike mandatory plans, magnet programs focus on schools' curriculum content as well as on their racial composition. When parents are allowed to choose among a variety of specialized programs, magnet schools not only further

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

integration but also improve student motivation and performance, heighten parental involvement, and even attract parents back to the public schools. Unfortunately, such magnet programs are all too rare.

The strong reactions provoked by mandatory busing, together with the success of magnet schools in voluntary programs, reveal that parents strongly desire control over their children's educations, as well as educational programs that are tailored to their children's needs. Regrettably, most of today's public school systems turn a deaf ear to these preferences, and as a result lack of parental involvement and loss of middle-class support for public schools are severe problems in many large cities today.

Choice and magnet programs can foster diversity, enrich curricula, increase parental involvement, make integration more successful, and expand educational opportunities for disadvantaged children. Choice programs require a new way of thinking about school zones and district boundaries, but they have already proven viable in many cities throughout the country.

Busing and white flight

Voluntarism in school desegregation got off to a bad start in the 1960s when "freedom of choice" plans failed in the South. Since such plans can exacerbate segregation by allowing whites to leave schools with large black enrollments, many federal courts saw appeals to voluntarism as pretexts to avoid integration. Given southern attitudes at that time, these courts were often right. In 1968 the U.S. Supreme Court outlawed freedom-of-choice plans in its *Green* v. *County School Board* decision, which ordered elimination of segregated schools "root and branch."

In 1971 came the ultimate insult to choice, the Supreme Court's decision in *Swann* v. *Charlotte-Mecklenburg Board of Education*, which endorsed mandatory busing in segregated southern school systems. Two years later mandatory busing was extended to northern schools by the Court's decision in *Keyes* v. *Denver School District*. Following *Swann* and *Keyes*, many of our largest cities began mandatory busing programs.

The advent of mandatory busing caught most parents in these districts by surprise. In spite of some dramatic public protests, opposition to busing failed to coalesce into a major national movement, perhaps because mandatory busing was adopted in only a few cities at a time over a period of years. Instead, many parents protested by enrolling their children in private schools or moving to another district.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

Although massive white flight did not result from every mandatory-busing plan, it was large enough in some cities to cause resegregation. Some school districts that had been predominantly white, such as Pasadena, Boston, Denver, Norfolk, Little Rock, and Savannah, became predominantly black within several years of the start of busing. In districts that were already predominantly minority, such as Los Angeles, Detroit, and Cleveland, mandatory busing accelerated white flight so much that the districts came to be racially isolated. By 1980, most experts—regardless of their policy preferences—had acknowledged the problem of white flight, though they still disagreed about its magnitude and probable duration.

White flight is best illustrated by white departures from individual schools. Average loss rates for white students bused to minority schools in Boston, Seattle, Los Angeles, Norfolk, Savannah, and Baton Rouge are striking, ranging from 40 to 60 percent. Few minority schools are going to be desegregated in any meaningful way if half of the bused white students do not show.

Understandably, at first the courts believed that opposition to mandatory busing was motivated primarily by racism. Because most white parents opposed mandatory busing while most blacks accepted it, the courts frequently assumed that white opposition reflected an unwillingness to allow contact between white and black children. Since the courts could not let the offending condition defeat the remedy, judges during the early seventies gave white flight virtually no consideration when designing desegregation plans.

Parents' views

Although racial prejudice undoubtedly contributed to early resistance to desegregation, especially in the South, by the late seventies detailed case studies were challenging the prejudice theory of white flight. Surveys revealed a wide variety of faults that parents of both races find with mandatory busing: unfamiliarity with their children's new schools, the greater distance that they would have to travel to reach their children in an emergency, the time spent travelling that could have been spent on homework and extracurricular activities, the requirement that their children travel to unsafe areas, and the harm to community spirit resulting from the loss of neighborhood schools. In many cases, parents react to mandatory school assignment as they might react to mandatory assignment of supermarkets or churches, believing that the government has no "right" to decide where their children go to school.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

Surveys show that most black parents support mandatory busing because they believe their children will get a better education at a predominantly white school. Most white parents agree, and do not want their own children taken out of a white school and sent to a school that they consider inferior. Hence the critical factor for both black and white parents is the perceived quality of education at the end of the bus ride. Most blacks feel that the costs of busing are outweighed by its educational benefits; in contrast, many whites feel that busing lowers the quality of their children's educations, and so they withdraw their children from the school system.

Why do black and white parents feel as they do? Much research has been done to determine whether black students perform better in white schools and white students perform worse in minority schools; it has usually concluded that the racial make-up of a school has little bearing on the academic achievement of either group. Since white students generally have higher test scores than black students, however, predominantly white schools have higher academic rankings than predominantly black ones. These rankings, which are usually published by school districts, may account for the misperception that racial composition affects academic outcomes.

The responses of whites in these surveys do not seem to be fronts for racial prejudice. Over the past decade or so, most white parents have not abandoned neighborhood schools when minority students were bused in, unless the minority proportion climbed above 50 percent. Moreover, where busing distances are short and minority schools are middle class and high-achieving, even mandatory busing has produced only minimal white flight. Bigotry cannot be the reason for white flight if whites keep their children in schools with large numbers of bused-in minorities, or if they are willing to send their children to nearby minority schools that have good academic records.

This is not to say that racial prejudice plays no role at all in white flight. The best evidence, however, reveals a substantial decline in racial prejudice over the past twenty years in both the South and the North, and suggests that racial attitudes can no longer be cited as the main motivation for white flight. White flight is instead best viewed as a result of parents' desires to control how and where their children are educated.

It may be argued that parents lack such control under a neighborhood-school policy, and hence that white flight really does reflect racial prejudice. But parents who can afford to choose between homes in a variety of neighborhoods do indeed exercise significant

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

control over their children's educations; in any event, we know from surveys that most parents think they do. Neighborhood-school policies, however, do not give much latitude for choice to parents who are not so affluent. This difference is undoubtedly one of the reasons that most black parents support mandatory busing while most white parents oppose it.

Choice and integration

Documentation of the massive white flight caused by mandatory busing began affecting court decisions at the turn of the decade. Some courts have approved choice plans in place of mandatory busing, and many of these voluntary plans have successfully stabilized enrollments while offering more long-term opportunities for desegregation.

Most choice plans approved in desegregation cases have two basic components. The first is a Majority-to-Minority (M-to-M) program, often called Open Enrollment, which provides free transportation to any student who transfers from a school in which his race is a majority to a school in which his race is a minority. Most participants in M-to-M programs are minority parents who want their children to attend predominantly white schools.

The second and more important component is a magnet-school program. Each magnet school is designed to have a particular focus, such as computer applications, creative and performing arts, math and science, honors classes, or "fundamentals" like the three R's and discipline. When part of a desegregation plan, magnet schools also control enrollment to ensure a specific racial composition. Although magnet schools can be located anywhere, they have been most effective for desegregation when placed in minority schools to attract white students.

The success of magnet and choice programs has revealed a basic principle: effective school integration is attained not by racial-balance formulas, but by educational incentives that also promote integration. Program diversity coupled with the right of parents to choose freely among programs can advance integration while satisfying broader needs in the American educational system.

These needs are clear. In a recent Gallup study of attitudes toward American education, fully 45 percent of parents gave grades of C or lower to the public schools that their children attend. Further, about a quarter of parents said that they would choose a different public school within their community if they could, and half would choose a private or parochial school if they could afford it.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

Seventy percent of parents believe that they should have the right to choose which public schools their children attend.

Issues of implementation

Simply expanding choice among public schools, however, would not suffice in most of our school systems, because there is not enough program diversity. The high proportion of parents who would prefer a private school to all public schools in their district indicates that many parents do not perceive significant differences between individual public schools.

The uniformity of school programs within districts stems from an educational philosophy that originated in the mid-nineteenth century. Promoted by such reformers as Horace Mann, John Dewey, and James Conant, this philosophy holds that public education in a democracy should promote equality and "homogenization" through a standardized, comprehensive program. In the modern era, these notions have led to uniformity of curricula and resources. This uniformity has been reinforced by civil-rights laws, which have led courts to demand that schools with differing racial or ethnic compositions have similar resources and programs.

It is remarkable that this philosophy of educational uniformity has survived so long in our diverse and complex society. Educational research is replete with examples of how rates of learning differ among socioeconomic groups, and of how different students respond better to different teaching methods. Yet though there are special options for gifted and disabled children, our educational system still clings to the goal of standard programs for most "normal" children.

Parents are dissatisfied with standardization, according to surveys I have conducted to evaluate alternative desegregation plans in numerous cities. When the magnet-school concept is explained to parents, large majorities of both white and minority parents strongly endorse it, not only as the most effective route to desegregation, but also as a way to improve the quality of education. Nearly half of all white parents and more than half of all minority parents, moreover, express willingness to transfer their children to a desired magnet program. The white rate is lower when the magnet is described as a former minority school in a minority neighborhood, but even under these conditions an appreciable fraction of white parents state their willingness to transfer—provided the magnet program maintains an even racial mix. These surveys also reveal a striking diversity of magnet programs that appeal to various groups of parents, ranging from back-to-basics schools to foreign-language centers.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

Specialized magnet schools would not end common education. Most magnets, regardless of theme, offer a common core of basic academic courses. But magnet schools differ considerably in their emphases, depth of coverage, faculty expertise in theme topics, electives offered, and special facilities.

Choice programs can, however, present logistical problems, because some schools may have more applicants than classroom spaces. But oversubscription can be handled in a number of ways, such as adding portable classrooms and placing the more popular magnets in less popular locations. By carefully surveying and monitoring parental desires, it should be possible to distribute the right number of programs to minimize oversubscription. The most important rule is to permit as much choice as possible in order to maximize community support and participation.

Another hurdle is financial, because the special facilities, teachers, and other resources required by magnet programs are often more expensive than regular school programs. On the other hand, the magnet concept does away with the expensive notion that all schools need the same special facilities and specialist teachers. By concentrating special science labs, music rooms, and workshops at certain schools, magnet plans can keep costs down.

Transportation costs present a more difficult problem. In most court-ordered choice plans, districts are required to provide free transportation. In districts not subject to court orders, parents may be willing and able to bear some or all of the transportation costs for the privilege of choosing a special school; those currently choosing private schools certainly do so.

Expanding choice programs throughout our public school systems is a difficult challenge. Given the present governance and financing of public and private education, there are many vested interests opposing major changes in the status quo. Indeed, most choice programs have been adopted under pressure from courts, and it is likely that few school boards would have endorsed them if the alternative had been anything less objectionable than mandatory busing.

Existing choice programs illustrate the options for expanding choice and reveal some of the obstacles that such expansion must overcome. There are three possible approaches: intradistrict choice, metropolitan choice, and statewide choice.

Choice within districts

Most existing choice programs operate within a single school district, and all but a few were initiated for the purpose of integration.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

The most successful choice programs have two essential elements. First, a district must design and implement a wide variety of magnet programs or specialized schools, drawing on past successes or on surveys of parental desires. Second, parents must be permitted to choose any school in the district (provided there is no adverse effect on racial balance), with the option of staying with their neighborhood school if they wish. To maximize choice, racial guidelines must be kept as flexible as possible, consistent with desegregation laws.

In school districts in which the choice plan is adopted primarily for the purpose of desegregation, rules generally require that transfers improve racial balance. This is a good rule for any district with a diverse racial make-up. Guidelines should at the very least require that transfers not worsen racial balance, in order to avoid a *de jure* segregation lawsuit.

San Diego features one of the largest and most successful choice programs, which was started in the late 1960s to promote integration and was expanded by court order in 1978. All students are assigned to neighborhood schools, but any student can opt for an M-to-M school or one of forty specialized magnet programs. Over 7000 minority students now use the M-to-M option and nearly 30,000 white and minority students are enrolled in magnets. About 4500 white students—nearly 10 percent of the total white enrollment—have transferred to magnet programs in minority schools.

San Diego is no isolated success story. Los Angeles operates an M-to-M program enrolling 20,000 minority students, as well as eighty-seven magnet programs enrolling 27,000 students. Similar choice plans have been implemented successfully in other large districts including Dade County, Florida; Prince Georges County, Maryland; Buffalo, New York; Cincinnati, Ohio; and Savannah, Georgia. In Savannah, where a new magnet plan recently replaced a mandatory busing plan, nearly a thousand white students have returned to the public schools from private schools.

A significant variation on these choice programs is the "controlled choice" approach adopted by Cambridge, Massachusetts; San Jose, California; and Yonkers, New York (at the elementary level). In most choice plans, children whose parents do not select a school are simply assigned to the neighborhood school. Controlled-choice plans, by contrast, abolish all school zones. Parents must rank their top preferences among the district's schools, including magnets, and the district assigns schools so as to maximize preferences subject to capacity and racial constraints. These constraints can be significant, however, and some students receive mandatory

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

assignments to an unchosen school. As a consequence, controlled choice as implemented in both San Jose and Yonkers has led to some white flight.

One testament to the success of true choice plans (as opposed to the controlled-choice approach) is that a few districts have adopted them solely to promote education, not integration. New York City's District 4 in East Harlem is a striking example. During the mid-1970s, as a predominantly minority district with a poor academic reputation and very low test scores, it developed a program to let students select the program most compatible with their goals. The district operates fifty-two magnet programs (some quite small) in twenty buildings, and test scores have improved dramatically. The program is so popular that about 1500 students from other parts of the city have voluntarily transferred to East Harlem, including over two hundred white students.

Metropolitan choice programs

Choice programs within districts can certainly expand educational opportunities, but they cannot address some of the more intractable problems facing large urban school districts. For example, they cannot offer integrated schools to the millions of children in cities that are predominantly minority. Although some courts have ordered interdistrict integration, most have found no legal basis for doing so. Interdistrict choice policies offer the best opportunity to promote metropolitan desegregation.

Choice across district boundaries can benefit suburban as well as inner-city students. While educational programs are fairly uniform within districts, there can be considerable diversity across districts. Thus a student from a small suburban district may find a more suitable program within a larger urban district, while a student from a suburban working-class district may find a more suitable program in an adjacent middle-class suburb.

For a number of legal and financial reasons, expanding choice across district boundaries is far more complex than increasing choice within a district. Fortunately, there are several examples of metropolitan choice policies that illustrate how these obstacles can be overcome.

One of the earliest metropolitan plans is the Boston METCO program, begun in 1965. METCO is a one-way busing program that lets black students from Boston transfer to a large number of predominantly white suburban districts. The program has been very popular over the years; about three thousand black students now participate,

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

and many others are on a waiting list. The state subsidizes the program, annually paying suburban districts between two and three thousand dollars per student and providing free transportation.

A more comprehensive example of metropolitan choice is the Wisconsin 220 program that provides two-way choice between Milwaukee and twenty-three suburban districts. The program offers financial incentives to suburban districts that accept minority transfers from the city and to Milwaukee for bringing white suburban transfers into city magnet schools. The receiving district gets a tuition stipend (equal to average per capita expenditures) for the incoming transfer student, while the sending district can count the same student in applying for state aid. Bus transportation is also subsidized. About a thousand white suburban students now transfer to Milwaukee schools, and 4200 minority students transfer to suburban schools.

Two troubling issues are raised by the Milwaukee plan. First, the method of "double funding" is very expensive; the program costs about $4000 per student transfer, not including existing state aid. Second, Milwaukee brought a lawsuit several years ago alleging discrimination by several suburban districts that would not accept minority students under the 220 plan, despite having available space. The case was eventually settled with all suburban districts agreeing to accept some minority students, but no final legal opinion was rendered on whether a school district has the right to refuse transfer students. A similar dispute has arisen in Kansas City, Missouri, concerning a voluntary interdistrict transfer plan involving the city and the suburbs. Until this legal issue is resolved, many states will be cautious about adopting interdistrict plans.

An interdistrict transfer plan could be designed for any cluster of contiguous districts, whether or not integration is involved. Ideally, each district would have its own choice plan, including magnets, but educational choices would be broadened by allowing students to cross district boundaries in search of the most suitable program. Such an arrangement is especially attractive in large metropolitan areas, in which a central-city district might develop magnet programs to attract suburban students, while suburban districts might attract city students seeking more integrated schools.

The most difficult issue is financial: Who should pay the tuition and transportation costs for a student transferring to another district? The most expensive approach is to have the state subsidize both transportation and tuition, as in the Boston METCO and the Wisconsin 220 plans. The least expensive approach is to have trans-

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

ferring parents pay both transportation costs and a tuition fee, as for private schools. Such "tuition transfers" are possible in many states today, but the cost is prohibitive for most families.

For the twenty-eight states that pay more than half of local school costs, one reasonable compromise is to have state funds follow the transferring student. An obvious political problem with this compromise is that districts with a net loss of students would object to losing resources. On the other hand, the potential for enrollment losses might foster healthy competition among districts and schools. Districts or schools facing a net loss of students might try harder to improve their programs, boosting educational quality for everyone. In fact, most advocates of choice believe that the free-market approach is one of the few ways to improve quality.

The main logistical constraint is classroom space. Those districts with declining enrollments have excess capacity to accept transfers, but growing districts might not unless they installed portable classrooms or built new ones. To be realistic, an interdistrict transfer plan must set rules for determining the availability of classroom seats and assigning the priority for those seats.

As with the other choice policies discussed here, desegregation guidelines are also necessary. In addition to avoiding potential legal problems, the combination of education and integration goals could help gain needed political support for interdistrict transfer plans. In areas not under court-ordered desegregation plans, a reasonable guideline is that transfers should not upset the racial balance in either the receiving or sending district.

Statewide choice plans

Perhaps the most promising trend for choice policies are actions at the state level that promise to expand choice for all students and schools in a state. The first statewide choice policy was recently adopted by Minnesota, and several other states are considering similar plans.

Starting in 1990, Minnesota students in all grades will be able to transfer to any other district in the state. Each district must allow students to leave, but it can declare itself closed to transfers or it can refuse students admission if it lacks capacity. Both receiving and sending districts (and schools) must comply with desegregation guidelines. While a district can refuse transfers on capacity or desegregation grounds, it cannot use any selection criteria; for instance, it cannot reject students because of their academic or behavioral records. State funds for local education (now about

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

$3600 per capita) follow the student to the new district, and the receiving district must provide transportation from the district boundary to the school. Parents must provide their own transportation to the district boundary. At this time there are no funds or requirements for specialized magnet schools, so the only incentives for interdistrict transfers are the regular programs offered by each district.

A similar plan may be submitted to the Massachusetts state legislature in 1989. (A previous statewide plan was vetoed by Governor Dukakis.) Under the Massachusetts plan, any student can transfer between districts that have filed interdistrict plans with the state, subject only to capacity and racial-balance requirements. For school districts with a racial-balance plan, net transfers must not upset the racial balance, and students attending a school in which their race is the majority will be given priority for transfer. The state pays $2000 per transferring student to the receiving district; the sending district can also receive state funds for the student, but only for one year. Transportation is subsidized only for students in federal school-lunch programs, although any child can use existing bus routes in either district at no cost. Unlike the Minnesota plan, the Massachusetts plan proposes special grants to urban districts for the development of magnet schools to attract suburban students. Statewide choice plans are also under consideration in several other states, including California, Colorado, Louisiana, Missouri, and New Jersey.

Some groups advocate a statewide voucher concept. In contrast to the other statewide choice programs described here, voucher policies take financial control over education away from school boards and give it to individual families. Each child receives a voucher that can be "spent" on any school, regardless of boundaries; each school's funding is based on the number of students the school attracts.

Although opinion polls show considerable support for the voucher concept, translating this support into a viable public policy is difficult. Since increased state funding usually means a larger policy role for the state, a state-financed voucher system might diminish the control that local school boards have over educational policy. But this loss might be offset by increased parental influence over individual schools, which would be striving to keep their "market" share of students.

The second and larger hurdle is political. Because voucher plans drastically weaken the entire educational establishment, they have

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

been opposed by most education constituencies and institutions, including the National Education Association (NEA) and most of its teacher-union affiliates. These education organizations helped defeat a voucher referendum in California in the early 1970s. Because vouchers would radically change school organization and financing, it is hard for the average citizen—or expert, for that matter—to foresee all the consequences of a voucher plan. This uncertainty, coupled with concerns about loss of local control, makes voucher systems a very hard sell indeed.

The federal role and private schools

Two additional issues require comment: the role of federal funds and the possible inclusion of private or parochial schools in choice plans.

If state funds follow a student who switches districts under a choice plan, what about existing federal funds that support education at state and local levels? More than $3 billion of federal funds now go directly to local districts for compensatory education programs alone under the "Chapter 1" program. The funds are targeted for schools with high proportions of impoverished students, which usually means schools with large minority enrollments. Current rules provide grants to schools and not students, so money does not follow minority students who transfer from a segregated school to an integrated school. In effect, the rules reward minority students for staying in segregated schools.

Minority parents would be better served if the rules were changed so that under a statewide or metropolitan choice plan, Chapter 1 funds could follow students to their chosen schools, even across district boundaries. Although Chapter 1 funds amount to only a few hundred dollars per student, when combined with state funds they would offer greater financial incentives for well-endowed districts to attract low-income students from less-advantaged districts. Converting Chapter 1 funds to vouchers in the absence of a state-financed choice plan, however, does not give public or private schools much incentive to attract Chapter 1 students.

There are several reasons to expand choice programs to include private and parochial schools. For parents and students, such expansion means more choices; for private schools, it means more money and a more diverse student body. Many lower-income parents, and especially minority parents, cannot afford private or parochial schools without public assistance.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

The arguments against allowing state-funded transfers to private and parochial schools are obvious: private nonsectarian schools fear state control of private education; subsidizing parochial schools would raise the additional constitutional question of church-state separation.

While the church-state issue is beyond the scope of this article, one comment is in order. Even if the courts permit state funding of parochial schools, it is likely that the state could not exercise much control over these schools' educational programs or standards without violating the separation rule. A state might not be willing to offer funds without some policy control.

The specter of state control over educational policy might lead nonsectarian private schools to refuse students from a state-funded transfer program. Private schools that accept state funds may be required to adopt policies that apply to all public schools, such as curriculum or staffing standards. If private schools have to decide between receiving state money and controlling their own programs, many will choose the latter.

Although none of the expanded-choice programs described here will be easy to implement, the prospects for improving educational options, for increasing parental involvement and satisfaction, and for enhancing integration make the effort worthwhile. Many supporters of absolutely free choice of schools will take issue with the proposal to link expanded-choice programs with integration efforts on the ground that racial-balance requirements unduly restrict parents' choices. In today's world, however, those who would expand choice programs face many legal and political obstacles. Linking choice programs and integration may be their best bet, not only because this combination unites several politically disparate groups, but also because it has already succeeded in many school systems.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

"American exceptionalism" revisited: the role of civil society

DANIEL BELL

THE RISE and fall of nations and empires is a mystery that has perennially fascinated philosophers and historians, tempting them to entertain grand visions of a ghostly demiurge that drives events, as with Hegel, or of some Wagnerian drama of challenge and response, of purification and heroism, as with Arnold Toynbee.

What accounts for the sudden gathering of energies that spur a people to surge mightily across oceans and continents and then lie spent—perhaps never to rise again, like the Near Eastern empire of the Assyrians, or like the Mongols, who by the fourteenth century had conquered China and spread their rule across Eurasia to the Danube, only to collapse? Histories of the West often begin with the rise and fall of Rome and, after a long hiatus, the shift of strength

An earlier essay by Daniel Bell, "The End of American Exceptionalism," appeared in The Public Interest's *special issue, "The American Commonwealth—1976" (Fall 1975). This essay consists of further thoughts on the subject, stimulated by recent events. It is based on a paper delivered at a conference on American exceptionalism at Nuffield College of Oxford University, organized by Professor Byron Shafer.*

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

from the Mediterranean to the Atlantic littoral, with the sudden rise and falling away of the Dutch, Spanish, and Portuguese empires, and, nearer our own time, the expansive spread and then contraction of Britain's global imperium.

An arabesque interpretation was given by the fourteenth-century Berber philosopher Ibn Khaldun, who in his beguiling work *The Muqadimmah* took Plato's cyclical account of the "fevered city" (with its self-destructive desire for luxury) and elaborated it into a philosophy of history: the rude but vigorous barbarians storm the older centers of civilization; their children consolidate their gains and build the great cities and palaces; then *their* children, soft and sybaritic, given over to perfumed arts and moral permissiveness, become unable to resist the new barbarians at the gates.

So simple an explanation is inherently suspect; its single-threaded story line makes it more fit for a Cecil B. DeMille extravaganza than for sound sociological analysis. Recognizing this, the contemporary French moralist and cynic E.M. Cioran has said: "It takes time to destroy an empire, but it only takes time." This observation may be true enough, but it hardly provides an explanation.

So the mystery remains, and historians and sociologists continue to seek, with their mundane instruments, to pluck out its heart. Brooks Adams, the brother of Henry Adams and also a historian of large ambition, exulted in 1900 that the United States was replacing Great Britain on the center stage of history. The reason was a shift not in military might, as in the past, but in the index of industrial production—in this instance, the production of steel—that was helping the United States to forge ahead of Britain as the mightiest nation on earth. For Brooks Adams, all this was fated, because access to and control of strategic metals and minerals, combined with energy and national will, were the bases of power. In *The New Empire* (1902), he skillfully showed how resource exhaustion creates fault lines in economic history—the tremors, one might say, of geology and geopolitics. (And, in an intriguing side glance, Adams observed Japan waiting in the wings for its own sun to rise.)

Although no single theory is altogether persuasive, there remains the striking fact that each nation, when it begins to gather its energies—military, political, and economic—to make a decisive entry onto the stage of history, does define itself in terms of its uniqueness. And later, as intimations of mortality begin to be felt, there arises the question (and hope) of exemption from decline, of "exceptionalism." In this country there has always been a strong belief in American exceptionalism. From the start, Americans have believed

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

that destiny has marked their country as different from all others—that the United States is, in Lincoln's marvelous phrase, "an almost chosen nation." American greatness seemed like a magnetic field that would shape the nation's contours from sea to sea, and the expansion across a vast continent seemed to confirm that manifest destiny. American strength after World War II, when the United States emerged as *the* paramount world power, seemed to define the "American century."

Yet now, as that century nears its close, there arise doubts as to whether America can maintain its greatness, whether the curtain may be falling on the main act of the American episode. So the question is being raised: How exceptional, really, is "American exceptionalism"?

Rise and fall, uniqueness, exceptionalism

In all these speculations and debates, three different historical questions are intertwined, and I wish to sort them out.

The first and most spectacular question is the one with which I began—the puzzle of the rise and fall of empires, and its possible application to the United States today. About a decade and a half ago, the economic historian Charles P. Kindleberger foresaw in a few years "an American climacteric" (the male equivalent of menopause), basing his prediction on the notion that the United States was losing the drive that had made it the economic and technological leader in field after field. And in the last year or two, a number of books have emphasized the theme of decline: Walter Russell Mead's *Mortal Splendor*, David P. Calleo's *Beyond American Hegemony*, and, with the warning that top-heavy military expenditures and low productive investment would reproduce in the U.S. the conditions that toppled France, Spain, and the U.K., Paul Kennedy's *Rise and Fall of the Great Powers: Economic Change and Military Conflict from 1500 to 2000*.

There are many reasons to appreciate the suggestiveness of these works, and also many reasons to be skeptical of their tendentious theme. As Samuel P. Huntington has wryly remarked: "In 1988 the United States reached the zenith of its fifth wave of declinism since the 1950s." And, more combatively, Huntington declared: "With some exceptions, declinist writings do not elaborate testable propositions involving independent and dependent variables." True—but then, what statements about macrohistorical phenomena do? The inherent difficulty of the social sciences, as Seymour Martin Lipset

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

once observed, is that there are too many variables and too few cases.

Indeed, there are often no clear time-frames indicating when to start the count, where to locate the midpoint of change, and where to mark the downturn to a conclusion. There have been various efforts, from Henry Adams to Derek de Solla Price, to create a "social physics" by plotting an S-curve based on initial exponential rates of change—e.g., the doubling rates of the number of scientific journals or of population—and identifying the falling-off phase as the inverse of the early, exuberant period; unfortunately, the parameters simply cannot be stated accurately.

Evaluating the significance of national decline is also complicated by the possibility that nations are less and less the relevant units of analysis as different structures emerge in world society—an international and integrated set of markets for capital and investment, for instance. In culture, too, we see a growing syncretism in which mass communication and mass markets shape popular culture—especially the youth culture—and middle-brow culture everywhere. So if economic and social forces are weakening national boundaries, what do we mean by the "rise and fall" of nations or national empires?

The second, very different, kind of question is that of the uniqueness of each nation or culture. That wise Harvard psychologist, Henry A. Murray, once remarked that each of us is in some ways like everybody else and in some ways like nobody else. What is true of individuals is also true of nations. All societies face the problems of exercising authority, of organizing and allocating resources. Many societies are alike in being, say, democratic or free-market societies. And each society has an idiosyncratic history, shaped by topography and location, traditions and culture, and that less definable element of *esprit* or *moeurs* that makes its culture and people distinctive. That idiosyncratic contour—call it national style—is often the overriding feature that one must identify in order to understand the history, politics, or character of a country.

But uniqueness is not "exceptionalism." All nations are to some extent unique in one way or another. The idea of "exceptionalism," as it has been used to describe American history and institutions, assumes not only that the United States has been unlike other nations, but that it is exceptional in the sense of being *exemplary* ("a city upon a hill")—a light unto the nations, immune from the social ills and decadence that have beset all other republics in the past, a nation exempt from the "social laws" of development that all nations

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

eventually follow. It is this idea of "exceptionalism" as a distinct historical theme, not "uniqueness" or "rise and fall," that I wish to pursue.

Sombart and the absence of socialism

For intellectuals, and particularly for radicals—who see themselves as the standard-bearers of the intellectual class—the theme of American exceptionalism is interwoven with the question first raised by Werner Sombart in 1906: "Why is there no socialism in the United States?" In 1896 Sombart, then a professor at the University of Breslau, had published a small book, based on eight lectures, under the title *Socialism and the Social Movement in the Nineteenth Century*. In this context, "social movement" means simply *socialist* movement. If socialism was the necessary, evolutionary outcome of capitalist development, the socialist movement was also inevitably brought into being by capitalism, a product of the class divisions of society.

The book reviewed the ideas of various socialist thinkers, in particular Marx, and dealt as well with the history and spread of working-class movements in England, France, and Germany. As John Bates Clark, a professor of political economy at Columbia University,[1] wrote in his introduction to the American edition of 1898:

> The structure of the world of industry is changing. Great establishments are exterminating small ones, and are forming federations with each other. Machinery is producing nearly every kind of goods, and there is no longer a place for such a middle class as was represented by the master workman, with his slowly learned handicraft and his modest shop. These facts construed in a certain way are the material of socialism. If we see in them the dawn of an era of state industry that shall sweep competition and competitors out of the field, we are evolutionary socialists.
>
> We may need a doctrinal basis for our view of evolution that is going on; and we may find it in the works of Marx and others. . . . Marxism, in practice, means realism and a reliance on evolution, however little the wilder utterances of Marx himself may suggest that fact. Internationalism is also a trait of this modern movement. . . . It is a natural affiliation of men of all nations having common ends to gain.

Sombart's book was an immediate success. In five years, it went through four editions in Germany and was translated into eleven

[1] John Bates Clark was a leader in the fashioning of neoclassical economics and a pioneer in the theory of marginal productivity that was later attacked by socialists for justifying the unequal distribution of income.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

languages. In 1905, when a fifth edition appeared in Germany (to be translated into seventeen languages, including Japanese), the book was two and a half times longer, and included detailed historical material on the development of the "social movement" in Germany, France, and England, as well as cursory surveys of eleven other countries. Its general themes were summed up in the chapter and subject headings: "The tendency to uniformity," "The social movement cannot be stayed," "Its present form is necessary." The argument, repeated in the conclusion, is that "the social movement is inevitable," and "the movement has taken the only form possible."

Yet there was the puzzle of the United States. In 1905 Sombart (then a professor at the commercial school in Berlin) wrote a number of long essays in the *Archiv für Sozialwissenschaft und Sozialpolitik* (one of whose editors was Max Weber) entirely devoted to the United States. These essays appeared in book form in German the following year, and began to be translated into English as *Why Is There No Socialism in the United States?*

It was a puzzle because Sombart assumed that there had to be a growing socialist movement in the United States, since "modern socialism follows as a necessary reaction to capitalism." And, of course,

> the United States is the country where the model of the Marxist theory of development is being the most precisely fulfilled, since the concentration of capital has reached the stage (as described in the famous penultimate chapter of *Capital*) at which the final cataclysm of the capitalist world is near at hand. [In 1905, no less.]

Why, then, was there no socialist movement in the United States, as in Europe? Why did socialism have so little appeal to the American worker? To answer his questions, Sombart (who had never visited the U.S.) drew heavily on the earlier work of Lord Bryce and on official statistics, and made some shrewd observations about the "capitalist mentality" of the American worker, the populist character of the electorate, the high standard of living, and the expectations of social mobility; he tried to show, to put it crassly, how the American worker had been "bought off" by the capitalist class. Amusingly, Sombart's work had begun to be serialized in the *International Socialist Review*, the theoretical journal of the Socialist Party, but when Section Two—on the success of American capitalism—appeared, the translation ceased. In the next issue, in a slashing review of the work, the editor remarked: "When we came to the nonsense on the conditions of the American worker, we stopped further publication."

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

But the *International Socialist Review* (like so many American sociologists who know the work only from its title) had stopped too soon. In the end, Sombart could not accept his own evidence. Like a true academic, he refused to allow mere immediate reality to triumph over theory. He concluded in the penultimate paragraph of his book:

> However, my present opinion is as follows: all the factors that till now have prevented the development of socialism in the United States are about to disappear or to be converted into their opposite with the result that in the next generation socialism in America will very probably experience the greatest possible expansion of its appeal.

The weakness of that expectation is obvious. Just as Marx stated in his introduction to *Capital* that he had found (using Newton's terminology) "the laws of motion" of capitalism, which would apply not only to England but to all capitalist societies, so Sombart, following Marx, believed that economic relations shape political and all other relations in capitalist society, and that the inevitable class divisions would lead to a polarization of society. And with his own rhetorical flourish, Sombart proclaimed in his broader work that we are in the midst of "one of those great historical processes" whose trajectory cannot be denied, much as "a mountain torrent rushes down from the highest peaks into the valley below in accordance with nature's unchangeable laws."

Yet if one reads Sombart's American book—putting aside the introduction and the conclusion and concentrating on the evidence—the obvious title would be: *Why Should There Be Socialism in the United States?* There is no exception, perhaps, because there is no rule.

Weber and secularization

A different kind of issue involving "exceptionalism" is raised by Max Weber's comments on the relation of religion to economic development. In *The Protestant Ethic and the Spirit of Capitalism*, Weber made the argument that the Calvinist strand of Protestantism was a necessary condition for the development of modern capitalism because of the rational principles common to both; their "elective affinity" caused them to reinforce each other. Calvinism spurred methodical work and habits of diligence, sobriety, and parsimony; it provided legitimacy to the profit motive; it gave dignity to achievements in work rather than in war, politics, or otherworldly piety.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

But Weber also argued that the further rationalization of society would culminate in the *Entzauberung der Welt*—the spread of a secular, "disenchanted" worldview. Now it is true that many European societies—in particular the United Kingdom and Sweden—have become largely "secularized," so that church attendance is low and theological questions have little appeal in intellectual or cultural life. Yet what can one say of the United States, the land where, more than any other nation, industrialization has raged unchecked, where pragmatism (in the vulgar sense of the word, not that of John Dewey or William James) is the ready and easy way in business and politics? Here fundamentalist and evangelical movements have surged forth time and again, and religious questions are still of serious interest to intellectuals, often in the guise of communitarian and other nonutilitarian values.

Is this another instance of American exceptionalism, a deviation from the "sociological law" of secularization? I think not. The term secularization is deceptive in that it conflates two very different processes—institutional changes (including the decline of religious authority in secular matters) and the more variable nature of *beliefs*—and the two are not isomorphic or even strongly coupled. Religious beliefs are not an epiphenomenal reflection of social structures. Nor are they creeds that are erased by the unfolding of a "rational" consciousness. It is quite striking that every Enlightenment thinker, from Voltaire to Marx, thought that religion would disappear by the twentieth century. They conceived of religion as fetishism, animism, superstition, and the like, an aspect of the "childhood" of the human race, which would be replaced by reason. They believed that science, with its unveiling of exact laws, and practical activities (such as economics or engineering) would discover the objective relations between persons or things, thus eliminating the bases of "magical beliefs." But they completely misunderstood the nature of religious beliefs, since these have always served to give an "answer" to the paradoxes and absurdities of life; or to provide significant meanings in symbolic form to life situations; or to provide some coherent responses to the existential predicaments—such as death and tragedy—that confront every single individual. Religious beliefs fall and rise variously in different cultures, and at different times; there is no one-way track to "secularization" so far as the varieties of religious experience are concerned. Even in Europe, a keen interest in religion among writers and intellectuals has survived the decline of the traditional churches. This same tendency is also apparent in the Soviet Union today.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

The redeemer nation

A third persistent and more manifest aspect of the doctrine of "American exceptionalism" derives from the conviction, inherited from the Founding Fathers, that ours is *the* providential nation, the one whose dedication to liberty and to the dignity of the individual lays the foundation for a new and better world. The Founders believed that we would avoid the decadence and degeneration of previous republics, since the new nation would be morally superior to any that had gone before, and since morality grounded its political order. This was Madison's reading of Montesquieu, especially on the fate of Rome. It was John Adams's reading of Davila on the outcomes of revolution.

This belief in exceptionalism was not wholly unqualified. Deists like Jefferson saw America as God's design worked out in a virgin, paradisaic land. Others, such as the more worldly and skeptical Franklin, nonetheless saw the possibility that the U.S. was exemplary, and thus a hope for the future. But has it all foundered? In the international sphere Wilsonian idealism has proven itself feckless in the face of Old World realism and Third World tyrannies. In the political realm, morality seems to have given away to mere moralism and political opportunism. Nevertheless, though our future may be more uncertain than at any time in the past two hundred years, some enduring values of character and even a powerful thread of idealism persist. One senses, in reflecting on American history, that there *was* something exceptional about our nation's history and the national character it created—exceptional not necessarily in the sense of being exempt from whatever "laws" of social evolution may exist, but in the sense of offering a "saving grace" (the theological term is appropriate) that may still make us exemplary for other nations.

In reflecting on our two-hundred-year history, one is drawn inevitably to the comparison with France, which is now celebrating (though not unanimously) the bicentennial of its revolution. The conventional wisdom, as in Hannah Arendt's *On Revolution*, is that the French, or at least the Jacobins, attempted a *social* revolution that would inaugurate a blissful new order and incarnate "the religion of humanity"—and that, given the nature of man, the attempt was bound to fail. The United States, in contrast, attempted a *political* revolution that, because it was more limited in its aims, could succeed—presumably by leaving the social order alone and thus allowing people an outlet for their passions while the political order mediated their interests.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

There is much truth in this contrast. But the easy division between the political and the social masks the fact that a new kind of social order *was* attempted on this continent. Indeed, this order may be at the root of American society's "success," by which I mean the establishment of an *institutional* foundation that has protected individual liberties and provided a degree of continuity and consensus, and thus a social stability, unmatched in history.

Anglo-American stability

In the twenties and thirties a large number of European parliamentary regimes—Italy, Portugal, Austria, Germany, Spain—collapsed and went fascist or authoritarian. In the last century, almost all of Latin America has had intermittent military or authoritarian dictatorships. One-party states abound in most of the "stable societies" of the world. Only the United Kingdom, since the end of its civil war in the seventeenth century, and the United States (with the exception of its civil war), plus a handful of smaller nations (Switzerland and the Scandinavian countries), have achieved political stability. How was this accomplished?

Let me focus on the United Kingdom and the United States. There are some obvious common factors, particularly geographical insulation. The U.K. has not been invaded since 1066. The U.S. has not been invaded since 1814, and its foreign wars (including the Mexican, Spanish-American, and World Wars) were fought outside its borders. As both countries developed, moreover, there were various outlets—geographical and social—for potentially discontented people, as well as increasing wealth. In Great Britain, there were administrative or military positions in the Empire for "second sons," and Australia for the convicts; in the U.S., there were the free farms of the Homestead Acts, free public education, new and expanding industries, and the undiminished promise of opportunity for generations to come.

Another factor common to the U.K. and the U.S. has been less noticed: the legal system. In contrast to the Continental legal system, with its powerful inquiring magistrates, Anglo-American legal procedure is adversarial, with an emphasis on rights. The Continental legal system seeks to uncover truth; the Anglo-American system seeks to establish guilt. The power of the State is restricted by the rights created by the common law and the Constitution.

But what of the United States itself? Is there a distinctive element in its history and sociological make-up that has contributed to its stability? I think there is, and the answer begins, oddly enough,

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

with that extraordinary German metaphysician, Georg Wilhelm Friedrich Hegel.

Hegelian civil society

For Hegel, the United States was always the embodiment of modernity, "the land of the future, . . . the land of desire for all those who are weary of the historical lumber-room of old Europe." Yet Hegel also said, in the introduction to his lectures on the philosophy of history, that America was still only a dream, and in tracing the vicissitudes of historical evolution, in which the rational continually sought to become the real, he retreated to "the Old World—the scene of World history." Today, if we are mindful of what *is*—even if it is not rational—we have to be concerned with the United States, which is the central actor in world history. The twentieth remains the American century. The United States is the foremost military and technological power, and the dollar the uneasy foundation of the world economy. The United States is the media center as well as the cultural marketplace (if not the cultural center) of the world. More important, it remains, with the United Kingdom, one of the few nations of the world to maintain its institutional stability, so that investors, here and abroad, still regard it as a safe haven.

What is the distinguishing feature, then, of the United States, one that has been its strength throughout its history? It is simply that the United States has been the complete *civil society* (to use a Hegelian term), perhaps the only one in political history. Hegel thought that England, as a bourgeois nation, exemplified his idea of civil society (*bürgerliche Gesellschaft*) in its emphasis on individual self-interest and the utilitarian mode of thought. But Hegel (and Marx, who lived in England for almost all of his adult life) never understood the *thick* character of England: the symbolism of the Crown, the strength of the landed classes, the centrality of an established church, the desire of the bourgeoisie (or its sons) to join the gentry, the weight of the Establishment, and the lure of titles and honors—the basic fact that England was a society in which a hereditary social order dominated the political and economic orders. Thus the Manchester liberals, such as Cobden and Bright, did *not* wish to rule; not only (as they admitted) did they not know how to govern, but they also sought the economic order's independence from the State, the freedom to pursue trade, industry, and wealth unhampered by restrictions. As Joseph Schumpeter cogently argued, British imperialism of the late nineteenth century, as distinct from the colonialism of the eighteenth, was not a necessity of capitalism,

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

but an extension of the status order allied with finance. The army and overseas administration provided places for the "second sons" disinherited by primogeniture, and—by emphasizing the primacy of the Empire, with its pomp and glory—a means of cowing the bourgeoisie.

The United States never had such a social order. It was built, rather, by a motley assortment of *novi homines*, vagabonds, adventurers, convicts, dispossessed cavaliers, and dissident Protestants from Quakers to Puritans, reinforced in the next century by a flood of immigrants from all the countries of Europe. It was an open society. Each man was free to "make himself" and to make his fortune. Marx was constantly warning the German radicals not to go to the United States, for he saw—as happened with Hermann Kriege and August Willich, and dozens of others—that the democratic and egalitarian atmosphere of the United States would supplant the old European-bred socialist beliefs. For these immigrants the attraction of the future was not some cosmic, universal idea, but the yearning to be treated as a person and the desire for opportunity and advancement—a feature Marx himself recognized, but only in the footnotes to *Capital*, where he wrote with amazement of the number of people who could move about freely and change their occupations "much as a man could change his shirt, egad."

The absence of the State

In Hegel's sense, there was no "State" in the United States, no unified, rational will expressed in a political order, but only individual self-interest and a passion for liberty. In every European nation (with the partial exception of Britain), the State ruled *over* society, exercising a unitary or quasi-unitary power enforced by an army and a bureaucracy. Paradoxically, even aside from the Civil War the United States probably experienced more internal violence, more class struggle, than most countries of Europe: the agrarian struggles against the moneyed interests and, more focused, the conflicts of labor with the capitalists. By any set of rough indicators—number of strikes, length of strikes, amount of dynamiting, number of times that troops were called out, number of lives lost in the period from the railroad strikes of the 1870s to the auto and steel strikes of the 1950s—American labor struggles were more prolonged and more violent than any in Europe. But these were not attempts to seize "State power." They were primarily economic conflicts against particular corporations and—in the great union actions of

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

the 1930s in coal, steel, auto making, and rubber—against entire industries; they were not contests for State power. In fact, the tremendous organizing actions against corporate economic power in the 1930s were undertaken with the support of the Roosevelt administration. The AFL-CIO could not have maintained its power without the support of the Democratic administration and the power of bargaining extended by the Supreme Court.

If there was no State,[2] what was there? To make a semantic yet substantive distinction, there was a *government*. This government was a political marketplace, an arena in which interests contended (not always equally) and in which deals could be made. Almost by chance, the Supreme Court became the final arbiter of disputes and the interpreter of the rules that allowed the political marketplace to function, subject only to the amendment of the Constitution—which then was again interpreted by the Court. The Constitution and the Court provided the bedrock of civil society.

The underlying philosophical theme of the Declaration of Independence is one of unalienable rights endowed in all men by their Creator. These rights were vested in individuals, not in groups, and institutions were designed to embody and protect them.[3] The Constitution was a *social contract* agreed to by the sovereign people. It has been the most successful social contract in history, largely due to the weakness or even the absence of the State.

Behind the Constitution stood a distinctive political culture. In the early years of the country's formation, Americans were self-conscious about being citizens of "the first new nation"—not a new quasi-religious utopia as proclaimed in the French Revolution, but a new, free republic founded by recurring to the first principles of government. Along with the strong republican emphasis went a

[2] In a recent paper, Quentin Skinner has argued that the word *State* came to be recognized when political philosophers (he singled out Hobbes) sought a term that would identify an emerging realm of power distinct from *res publica* or *civitas* (since those terms designated popular sovereignty) and from the literal power holders, such as the monarch, who insisted that fealty be sworn to them as persons, rather than to an institution. The *State*, thus, was an entity that doubly abstracted sovereignty from the rulers and the ruled and combined the rights alienated from both into the *persona ficta* of "the State." (This theme of alienation of rights is found in Hobbes, who holds that the individual surrenders his natural rights to the commonwealth, and later in Rousseau, who holds that in the "social contract" each person submerges himself and his rights into the general will.)

If one defines the *State* this way then there certainly was no *State* in the United States, for the very character of the founding documents denied the idea of alienated rights and placed sovereignty in "We, the People."

[3] This is why there is so much litigation in American society, and such an expansive role for the courts; if the foundation of society is one's individual rights, then one must sue in order to defend and protect them.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

civic (not statist) concern for a kind of republican virtue, derived from reflection upon the history of the Roman Republic and the desire to avoid the degenerative diseases—civil strife spawned by faction, the use of mercenaries rather than a citizens' army, and the arbitrary concentration of power—that had crippled earlier republics. One sees this double-barrelled concern—to avoid both the centrifugal dangers of faction and the centripetal hazards of centralized power—in the *Federalist*, with its echoes of Montesquieu, and in the writings of John Adams.[4]

Populism and plutocracy

There was, by design, an intellectual foundation for this "new order." But as the nation expanded and political parties developed—an eventuality neither desired nor even foreseen by the Founders—political competition spurred the egalitarianism and populism that have been the distinguishing features of American politics since the 1830s. There was a shift from intellectualism and thought (the Lockean emphasis, in a sense) to sentiment and emotion (a strange Rousseauian twist), for while intellectualism implies a claim to rule based on wisdom or learning, sentiment affirms egalitarianism through its appeal to a common feeling among all men. This shift was reflected as well in a turn away from the past and from Europe, to the land and the moving western frontier. All this was symbolized in the election of General Andrew Jackson, the first "Western" president, in 1828 (and the throwing open of the White House to the people); it was ratified, so to speak, in the "cider barrel" election of 1840, when the high-toned Whig opposition, realizing the necessity of a populist appeal, nominated a second military hero, General William Henry Harrison (nicknamed "Tippecanoe" for his battles against the Indians), and dispensed free cider from the barrel to the great unwashed.

The other transforming element of American politics was the rule of money. With the rise of the plutocracy, money was easily used to gain influence and induce outright corruption—a feature that reached its apogee in the administration of another war hero, General Ulysses S. Grant, and disgusted the fastidious Henry Adams—

[4] "It has been the will of heaven," John Adams wrote in 1776, "that we should be thrown into existence at a period when the greatest philosophers and lawgivers of antiquity would have wished to live. A period when we have an opportunity of beginning government new from the foundation. . . . How few of the human race have ever had any opportunity of choosing a system of government for themselves and their children!"

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

as is evident in a scene portrayed in his novel entitled, significantly, *Democracy*.[5]

The outcome of these changes is the strange structure of domestic American politics today, which few foreigners, and not even many Americans, understand. The American political order is two-tiered: the President is chosen in a plebiscitarian referendum, in which the person, not the party, is the cynosure of identification and judgment, the focus of mass *passions*; the Congress, however, is elected to respond to group *interests*, though today not necessarily the moneyed interests.

It is no accident that so many presidents have been war heroes, so many of them generals (from Washington to Eisenhower), usually elected soon after a war, in a country that until recently never had a large standing army. Heroes were considered to be "above" party, while during periods of normalcy the presidents have been colorless neuters such as McKinley, Harding, or Coolidge. (The one certified intellectual, Woodrow Wilson, a political-science professor and former president of Princeton University, was elected in 1912 because of the only significant three-way split in American history, and he was re-elected during the war in Europe on the ground that he would keep America out of the war.) Such presidents of the post-World War II years as Truman, Nixon, Carter, and Reagan have been unabashed populists, running against what is called "the Establishment."

Yet congressional elections show a very different pattern. This two-tiered structure was made startlingly clear in 1984. Ronald Reagan, one of the most popular presidents in history, carried all the states in the nation except one—Walter Mondale's home state of Minnesota. Reagan won by one million votes in New Jersey, yet the Democrat Bill Bradley won a Senate seat in that state by the same number of votes. Reagan carried Massachusetts by half a million votes, yet John Kerry, a left-wing Democrat, won by half a million votes too. The same pattern repeated itself in 1988. George Bush carried Ohio handily, but Howard Metzenbaum, one of the Senate's leading liberals, was also re-elected. Since World War II, though

[5] Though the end of the century saw the rise of corporate power and huge concentrations of wealth, there was no national "ruling class." Mark Hanna sought to create one through the National Civic Federation, with the goal of welding the plutocracy together as a political force, but his effort foundered. In the economic realm, the anti-trust movement, populist at its source, broke up many of the trusts, as later the Glass-Steagall Act, in the early years of the New Deal, sundered the unified financial power of investment and banking. One can say that in the U.S. there have always been economic and political elites, but never a unified ruling class.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

the presidents have come largely from the Republican side, the Congress has been more often Democratic, and the House of Representatives consistently so.

The populist mentality also characterized small-town culture (not the modern mass-media culture), which was largely religious—Protestant, moralizing, and fundamentalist. It was also, given its emphasis on the literal truth of the Word, anti-intellectual and anti-institutional. There was, of course, no aristocratic tradition or strong artistic heritage; the arts were crafts—plain, simple, and utilitarian. And the Catholic tradition—which in Europe provided a firm intellectual foundation in theology and dogmatics, beauty in litany and liturgy, and distinctive styles in architecture and sculpture, all of which became fused with a historic high culture—was in the United States embodied in the Irish church, made up largely of immigrants or rude self-made men, so that (with the exception of a John Courtney Murray, say) until recently it has lacked intellectual weight and made little contribution to American thought and culture.

Thus we find a society very individualistic and populist, its fluid modernity shaped by the open expanse of geography and by the rule of money, the riches going to rugged individuals bent on pursuing their own ends. Both environment and economy were unencumbered by the polity. Indeed, from the 1870s to the 1930s, the Supreme Court struck down numerous efforts at social legislation and regulation, other than antitrust laws. Freedom was defined principally in individualistic economic terms. That was the consensus. That was the framework of the American civil society.

The rise of the State

In the last half century, the lineaments of a State—institutions to shape and enforce a unitary will over and above particular interests—have emerged in the United States, beginning with the New Deal of Franklin D. Roosevelt. The New Deal has usually been interpreted ideologically (from the left) as saving capitalism or (from the right) as instituting "creeping socialism." While there is truth in both arguments, neither is very satisfactory. The rise of the State in America was unplanned and not at all consistently ideological. It was a response, framed during crisis, to three things: increases in the scale of the society, shifting political alignments, and the logic of mobilization for total war.

The problem of scale was fundamental. By 1930 the United States had become a national society; from 1900 to 1930 corporations had begun to operate in nationwide markets. But the coun-

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

tervailing political power was ineffectively distributed among the states. When the economy broke down during the Great Depression, the Roosevelt administration responded first with the National Industrial Recovery Administration, establishing nationwide codes and setting prices for the major industries. It adopted, in fact, the principles of the corporatist state as urged by many capitalists such as Gerard Swope of General Electric and the DuPonts. When the Supreme Court declared this unconstitutional, the New Deal began to move away from corporatist planning and to rely more on regulatory mechanisms to control markets. Out of this "second New Deal" came the Securities and Exchange Commission to oversee financial markets and the National Labor Relations Board to promote labor stability through collective bargaining. The New Deal thus became a "matching of scales," creating national political institutions and national political rules to match national economic power.

The logic of stabilization and control led to increasing reliance on the tax code to guide private investment, and the emerging State took on the responsibility of promoting economic growth and influencing the allocation of resources. In addition, the domestic political realignment, in which labor, farmers, and minorities swung into the Democratic column, led to national farm subsidies and the protection of disadvantaged groups. More broadly, it led to the idea of entitlements and a welfare state designed to protect people from economic and social hazards.

The third great impetus to statism was war and foreign policy. War has always and everywhere been a decisive motive for creating a State. It focuses emotions against a dangerous foe and requires energy and unity; it forces the State to mobilize the human and material resources of society. A mobilizing society—often, though not always, driven by war—becomes the forcing house of a State.

Significantly, the external foreign-policy pressures and the internal domestic factors were *not* intertwined. The great-power politics of American foreign policy was not a reflexive response to domestic pressures (despite talk of a "military-industrial complex"), though some regions and firms inevitably benefited. The spread of subsidies and entitlements during the Johnson administration was not dependent on defense mobilization. In fact, as budgetary pressures intensified, the two types of spending came more and more into competition with each other, which made it much easier for the Reagan administration to reduce regulation, subsidies, and entitlements in the domestic arena while substantially increasing the defense budget. Thus there was never really a unitary national State.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

All these activities are reflected in the growth of government, of public-sector employment, of taxation, of the proportion of the gross national product initiated in the public sector (including defense), and—especially in the last decade—of the federal budget deficit and the national debt. The new statism is also reflected in rising discontents. In many societies, taxes are seen as purchasing public services that individuals cannot buy for themselves; in the U.S., however, many people resent taxes, seeing them as "our" money that is taken by "them." The growing regulation of all areas of economic and social life has fed resentment against government intrusion.

It is evident that the problem of "the State" has become central for American political theory and practice. The question of State-society relationships, of the public interest and the private appetite, is clearly *the* salient problem for the polity in coming decades. And with the expansion of the scale of economic and political activities, the national state has become too small for the "big" problems of life (e.g., the tidal waves of the capital and currency markets) and too big for the "small" problems (e.g., the problems of neighborhood and community). Foreign policy, which once forged unity, now prompts disagreements as the idea of a consistent national interest has lost its force, while ideological passions continue to rise and fall. The idea of a managed economy has lost credibility in the face of the difficulties of "fine tuning," and there has been a return to market mechanisms. Bureaucracies have become too centralized and burdensome in most societies. Individuals increasingly wish to deal with social welfare, the environment, and the quality of life at a level at which they can control the decisions. It is striking, in fact, that in country after country—particularly in Poland and Italy—the idea that "civil society" rather than "the State" should be the primary arena of political activities has become a major theme of exploration and debate, now that the old ideologies have faded.

The return of civil society

We see, then, the return in recent years of the idea of civil society. But of what kind? For Hegel, civil society was characterized by anarchic self-interest—economic individualism that had destroyed the traditional institutions of family and village, but could not replace them with *Moralität*, the abstract rational beliefs of a unified and universal will. Hegel was wrong in his romantic, overdrawn contrast between unmediated traditionalism and self-centered, appeti-

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

tive utilitarianism—a contrast that could be mastered only by a State. Yet this romanticism has run like a scarlet thread through German thought. In the social sciences it has given us the simplicities of the *Gemeinschaft/Gesellschaft* (community/society) dichotomy. In philosophy and politics it has given us the view, embodied in Martin Heidegger's allegiance to the Nazis, of a heroic *Volkstum* and *Staatstum* arrayed against the hated commercialism of bourgeois society. (In German, the terms for "civil society" and "bourgeois society" are the same—*bürgerliche Gesellschaft*.) Yet these exaggerated contrasts, and the denigration of civil society as "anomic," disastrously misread the complexities of modern society and the difficulties of establishing the limits of freedom and civility.

The demand for a return to "civil society" is the demand for a return to a manageable scale of social life, particularly where the national economy has become embedded in an international frame and the national polity has lost some degree of its independence. It emphasizes voluntary associations, churches, and communities, arguing that decisions should be made locally and should not be controlled by the State and its bureaucracies. Utopian? Perhaps. But more possible now, given the new technologies, with their promise of decentralized industry and smaller firms.

This idea of civil society does not signify a return to the traditional European idea of civic humanism or republican virtue. Classical republican virtue (which is *not* the republicanism of Adams or Jefferson) rested on the notion that the community was always prior to the individual. The common good was a unitary good. But a modern civil society—one that is heterogeneous and often multiracial—has to establish different rules: the principle of toleration and the need for plural communities to agree on rules governing procedure within the frame of constitutionalism.

All of these issues are engaging political philosophy today. The actual existence of civil society, however, has been distinctively American, shaped initially by the varied impulses of rugged individualism and radical populism. Yet to the extent that a renewed appreciation for the virtues of civil society is again required in order to define a new kind of social order that limits the State and enhances individual and group purposes (thereby achieving the goals of liberalism), it is also one more twist to the long tale of American exceptionalism.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

Judicial activism: even on the right, it's wrong

LINO A. GRAGLIA

JUDICIAL REVIEW is America's most dubious contribution to the science of government. In its name, judges routinely disallow policy choices made by other branches of government, ostensibly on the ground that the policies are prohibited by the Constitution. Indeed, judges have not merely disallowed but imposed policies, as in judicial decisions effectively assuming control of schools, prisons, and mental institutions. Although often ignored, the central questions of constitutional law are whether and how this power, held by unelected judges with lifetime tenure, can be reconciled with our system of decentralized self-government through elected representatives.

The most striking thing about judicial review is that it is not explicitly provided for in the Constitution. By contrast, the comparable power of the President to veto legislation is specified in detail, with limits on its exercise clearly stated. Since the power of judges to invalidate the acts of an elected legislature was and is unknown in English law, and since this power is obviously dangerous if not

---

A longer version of this article will appear in The Constitution and Economic Rights *(Ellen Frankel Paul, ed.), to be published by the Social Philosophy and Policy Center, Bowling Green State University.*

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

narrowly confined, one can doubt that the ratifiers of the Constitution knowingly granted it. At the least, one can assume, as Judge Learned Hand did, that the power is very limited, and should be employed only in exceptional circumstances.

Alexander Hamilton argued for judicial review in *Federalist* 78, and Chief Justice John Marshall established it in *Marbury* v. *Madison* (1803). They claimed that it was inherent in a written constitution—although other nations had and have written constitutions without judicial review—and that it did not differ from the application and enforcement of other laws by judges. Judges would simply refuse to enforce statutes in clear conflict with the Constitution, such as (in Marshall's example) a federal statute permitting conviction for the crime of treason on the basis of the testimony of only one witness to an act, despite the constitutional provision requiring two. Hamilton and Marshall insisted that judicial review would not empower judges to make policy, because, in Hamilton's words, they would be "bound down by strict rules and precedents which serve to define and point out their duty in every particular case."

The Constitution and judicial review

Judicial review as described by Hamilton and Marshall would have given the courts little to do. Congress has never passed a one-witness treason law, and the Constitution, sensibly, does not prohibit a great deal more. The Constitution is a very short document. It is totally unlike the Bible, the Talmud, and even the tax code—all extensive treatments of mysterious subjects containing many particulars.

The Constitution was adopted primarily to facilitate commerce and trade; it created a national common market by empowering Congress to remove state-imposed impediments to interstate trade. It was not adopted, as is now often assumed, in order to create federal constitutional rights. Indeed, the Constitution has proven durable largely because it attempted to do little more than create the structure of a stronger national government. It placed few restrictions on the exercise of the federal government's enumerated powers—even after the adoption of the Bill of Rights, which deals primarily with criminal procedure—and even fewer on the powers of the states.

Because the Constitution restricts policy choices so little, American lawmakers seldom transgress it. There are very few examples of enacted laws that clearly violate the Constitution. Perhaps

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

the clearest example in two hundred years is Minnesota's 1933 Mortgage Moratorium Act, debtor-relief legislation clearly prohibited by the contracts clause. By a five-to-four vote, however, the Supreme Court held the law constitutional, thereby missing one of its few legitimate opportunities—if not its only one—to exercise judicial review to invalidate a law. If judicial review were merely judicial power to enforce the Constitution, it would be quite unimportant.

In the last thirty-five years, however, judicial review has arguably made the Supreme Court the most important institution of American government in determining domestic policy. Virtually every important social-policy innovation in that period—regarding abortion, capital punishment, crime control, prayer in the schools, government aid to religious schools, compulsory racial integration, street demonstrations, pornography, libel, sex discrimination, discrimination on the basis of legitimacy, and so on—has been decided not by elected legislators, but by the nine appointed justices of the Supreme Court. The Court has become the final arbiter and even the initiator of change in fundamental areas of American life.

How has the Court been able to make a virtual straitjacket out of a Constitution that imposes so few restrictions on popular government, especially on state government? To put it bluntly, the Court has successfully perpetrated a fraud: contemporary constitutional law has little or nothing to do with the Constitution and everything to do with the willingness of a majority of Supreme Court justices to make their policy preferences the supreme law of the land. The great bulk of rulings of unconstitutionality involve state law, not federal law, and nearly all of them are ostensibly based on two pairs of words from the Fourteenth Amendment—"equal protection" and "due process" (which is said, surprisingly enough, to "incorporate" almost all provisions of the Bill of Rights, making them applicable to the states). Obviously Supreme Court justices do not arrive at their decisions on enormously difficult questions of social policy by studying those four words. To speak of the Court making its controversial constitutional decisions by "interpreting the Constitution" is to speak conventionally but also misleadingly: in almost no case is any question of interpretation involved.

The Court's new prestige

The Supreme Court's preeminence dates from the *Brown* decision in 1954, prohibiting *de jure* racial segregation of public schools and, it soon appeared, all racial discrimination by government. Although such segregation was not actually eliminated until Congress

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

acted ten years later, the Supreme Court won much new prestige by attempting to rectify a clearly indefensible and intolerable situation. This new status enabled it to assume a new role in the American system of government, as the accelerator of social change. The *Brown* decision proved to many people—including many judges—that judges were better at setting policy than the elected representatives of the people. If the Court could end racial discrimination in the South, what great things could it not do? And if the Court could do great things, why shouldn't it? To question policymaking by the Court thereafter was inevitably to be met with the devastating reply, "So you disagree with *Brown*?"

Brown has given proponents of judicial activism—constitutional lawmaking not based on the Constitution—a club with which to beat opponents into submission even when judicially imposed policies (such as busing to achieve racial balance in schools) are clearly destructive and strongly opposed by a large majority of the American people. Judicial activism since *Brown* has had nothing to do with the Constitution and everything to do with advancing a particular political ideology—the ideology of American liberalism.

The liberal agenda advanced by contemporary constitutional law is strongly egalitarian and antitraditional; but as the last three presidential elections have attested, it is not a popular agenda. For this reason, its advocates want the judiciary to be thoroughly insulated from accountability to the electorate. A system of government by an elite not subject to electoral control, however, cannot be openly advocated in this country: too many Americans believe that all citizens should have an equal voice in government. Defenders of judicial lawmaking must therefore depend upon obfuscation and even mystification. Fortunately for their purposes, the Constitution has come to be regarded as a quasi-sacred document, a mysterious compendium of commands and limitations on the popular will. Similarly, the Supreme Court has become the Constitution's oracle. Before the courts could advance a liberal agenda, the populace had to be convinced that their policy prescriptions, however unpalatable or even irrational, were commands of the Constitution beyond the understanding of ordinary people.

Court supporters on the left

If the Constitution is the Holy Writ and the Supreme Court the oracle of our constitutional religion, professors of constitutional law in our law schools and in our political-science departments are its

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

priests and prophets, those who interpret and justify to the masses the Court's surprising and unwelcome doctrines. Their task has been to explain why the Court has been right to ignore the text of the Constitution. To do so, they have been compelled to concoct and defend "noninterpretivist" or "nonoriginalist" theories of constitutional interpretation. Thus we find Justice William J. Brennan, Jr., the quintessential judicial activist, openly arguing that the meaning of the Constitution is both unknowable and irrelevant—the product of "a world that is dead and gone."

The second task of the constitutional-law theorists has been to substitute for the disposed-of actual Constitution a new, grander, and more suitably uncertain one. After all, there must still be something called the Constitution so that the Court's policymaking can be described as constitutional law. Justice Brennan's solution, typical of the highest reaches of contemporary constitutional scholarship, is to argue that the Constitution be understood as nothing more definite than the "lodestar of our aspirations," a compendium of "majestic generalities and ennobling pronouncements [that] are both luminous and obscure," which, however, he remains able and authorized to "interpret" and enforce. Proponents of judicial activism are invariably strong believers in principle—which judges are assumed to be peculiarly good at discovering and devoted to following—and highly skeptical of the merits of majority rule. Justice Brennan, for example, tells us, on the one hand, that the Constitution contains "great" and "overarching" principles to guide and legitimate judicial decisions, and warns us, on the other, against the "unabashed enshrinement of majoritarianism" and "blind faith" in democracy.

Judicial activism since *Brown* has been very good for liberals, steadily moving America closer to their view of the good society, a society characterized by easy access to abortion, the ready availability of pornography, preferential treatment for racial minorities and the sexual majority, and extravagant protections for criminal suspects. It is not surprising, therefore, that liberals defend the Court's activism, whatever the cost in intellectual integrity. Much more difficult to understand is the recent appearance of judicial activists of the right, conservatives or supposed conservatives who have joined the liberal enterprise of urging the Supreme Court to intervene frequently in the political process, albeit in the service of different ends. They object to contemporary constitutional law not because it is a ruse for the Court's enactment of a political agenda, but instead because they think that the Court has enacted the wrong agenda.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

Judicial activism on the right

The best hope for conservatives, some believe, is not to fight but to seek to capture or rechannel judicial power. This is surely the best hope for libertarians, who like liberals have a well-defined political agenda that most Americans reject. Although the liberals' objective—the powerful government necessary to impose and enforce equality—and the libertarians' objective—the least powerful government necessary to protect individual liberty—could hardly be more opposed, their arguments for judicial activism are identical. Because the Constitution no more places American government in a libertarian straitjacket than in a liberal one, the libertarian agenda, like the liberal one, requires that the Constitution be ignored in favor of something more conducive to judicial legislation.

Recent major works urging judicial activism of the right include two books sponsored and co-published by the libertarian Cato Institute—*Public Choice and Constitutional Economics* (1988), edited by Gwartney and Wagner, and *Economic Liberties and the Judiciary* (1987), edited by Dorn and Manne—and Bernard Siegan's 1980 book *Economic Liberty and the Constitution*. The movement's most prolific and articulate proponent, however, is undoubtedly Richard Epstein, whose 1985 opus *Takings: Private Property and the Power of Eminent Domain* in effect is its Bible. Stephen Macedo's 1986 monograph *The New Right v. the Constitution*, a short statement of basic principles, is the movement's manifesto, made authoritative by a foreword by Epstein. Macedo, a follower of such thoroughgoing liberals as Ronald Dworkin, Walter Murphy, and Soterios Barber, nicely illustrates the congruence of judicial activism of the right and left. It will be interesting to have Macedo explain in some later work how he reconciles Dworkin's belief that egalitarianism is justified by natural law with Epstein's belief that absolute property rights are justified by natural law.

Like all proponents of judicial activism, Macedo begins by finding the Constitution's written text woefully unclear. It is often "uncertain," presenting, as in the case of the First Amendment, "extremely difficult problems of interpretation." The First Amendment is "relatively straightforward," however, compared to the "truly majestic generalities" of other constitutional provisions, such as the Fourteenth Amendment. The Fourteenth Amendment, in turn, is clear compared to other provisions, such as the Ninth Amendment, that have "been deemed so obscure as to wholly defy judicial interpretation." If all of this is true, of course, the reasonable conclusion would be that such provisions are wholly unsuited to serve as law

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

enforceable by judges. But Macedo concludes instead that the Constitution authorizes judges to exercise judicial review on the basis of "moral philosophy"—a view that is clearly inconsistent with the constitutional scheme of government. His suggestion that the nation turn to a committee of unelected lawyers for binding moral judgments is simply bizarre. If we wanted government by philosopher-kings, we would, of course, turn to philosophers, not lawyers. We would provide them with facilities for philosophical investigation, and we would not embarrass them by making them pretend to be interpreting the Constitution.

Macedo sees insuperable obstacles to determining the meaning of the Constitution in the only way it can be determined, on the basis of the Framers' intent. "Whose intent is to count," he asks, "what counts as evidence of intent," and what if the intentions were "complex and conflicting"? This standard argument of proponents of judicial activism fails on two grounds: first, we do sufficiently know the intended meaning of litigated constitutional provisions; and second, if we did not, there would be no basis for judicial review.

Many texts are indeed difficult to understand, but the Constitution is not among them. We almost always know all that we need to know about the Constitution to decide actual cases; it is almost always entirely clear that nothing in the Constitution forbids the challenged policy choice. The Court's controversial constitutional decisions are not controversial because of disagreements about the meaning of constitutional provisions, but because it is clear that those decisions are not required by *any* constitutional provision. No one really believes, for example, that the states lost the power to prohibit abortion because Supreme Court justices decided to take one more look at the Constitution in 1973 to see what it had to say on the subject and discovered in the Fourteenth Amendment—which was then 105 years old—what had never been noticed before. Similarly, the states did not lose the right to make policy regarding prayer and Bible reading in public schools because a majority of the justices noticed for the first time in 1962 and 1963 that the First Amendment, supposedly applicable to the states by reason of the Fourteenth, deprives them of that right; the states lost this authority not because of but despite the First Amendment, which was clearly intended to prevent exactly that kind of federal interference.

Furthermore, if the meaning of a constitutional provision is in fact so obscure as to defy interpretation, it cannot provide a basis for holding a law unconstitutional. An indecipherable constitution-

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

al provision is a nullity—not, as Macedo would have it, a grant of unlimited authority to judges to invalidate laws in the name of "moral philosophy" or the "principles of justice and natural rights." It is incredible that the Framers meant to make such a grant; if they did, our first order of business would be to rescind it as inconsistent with self-government. Such a grant would, in any event, deprive the Constitution of further relevance to judicial review; constitutional interpretation would play no further role in the judicial process—except that the decisions would still be called constitutional decisions and invalidated laws would still be described as unconstitutional.

If *glasnost* can apply to the United States as well as the Soviet Union, this situation should be fully explained to the public. The public should be told that laws found to be unconstitutional do not violate any specific constitutional provisions, but rather offend the judges' understanding of moral philosophy and the principles of natural law—that is to say, their political views.

The "takings" clause

Richard Epstein also opposes the jurisprudence of original intent. His influential book *Takings* rests on a somewhat more sophisticated, or at least more subdued, version of Macedo's argument against a knowable Constitution. Epstein has built a truly impressive structure of constitutional limitations out of no more material than the "takings" (eminent domain) clause of the Fifth Amendment—"nor shall private property be taken for public use, without just compensation"—and the indispensable Fourteenth Amendment, according to which virtually every legislative action could be challenged as a compensable taking of property.[1] Epstein would give judges as much to do in the name of enforcing the takings clause as Macedo would give them to do in the name of moral philosophy, justice, or natural law. His entire structure stands, however, on twin pillars of sand: the application of the takings clause to the states, and the divorce of the takings clause from its historic, intended meaning.

As Epstein acknowledges at the beginning of his book, the Bill of Rights in general and the takings clause in particular were meant to apply only to the federal government, not the states; this was "explicitly and correctly held by Justice [sic] Marshall for a unanimous court in *Barron* v. *Baltimore*" in 1833. This confession would have

[1] The Fourteenth Amendment repeats the Fifth Amendment's due-process clause but not the immediately following takings clause or any other provision of the Bill of Rights.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

been an excellent place for the book to end. The notion that the Fourteenth Amendment—a measure adopted solely to provide additional federal protection to the newly emancipated blacks—was meant to make the Bill of Rights applicable to the states simply reflects the desperation of proponents of judicial activism. The Reconstruction Congress that proposed the Fourteenth Amendment did not mean to make a major transfer of policymaking power to the Supreme Court; nor did the states that ratified it mean to make such a transfer to both Congress and the Court, empowering them to impose an array of new restrictions on the states.

Epstein, to his credit, cannot bring himself to make the fanciful "incorporation" argument, even though application of the takings clause to the states is essential to his system. Instead, however, he wants to apply the takings clause to the states without justifying that application as an appropriate interpretation of the Constitution. "Since this book is a mix of political and constitutional theory," he grandly announces, "I shall follow the present law and treat the [eminent domain] clause as though it applies both to state and federal action, which is consistent with the basic Lockean design." Whether or not application of the takings clause to the states as well as the federal government is consistent with the Lockean design, it is certainly not consistent with the constitutional design, which places few restrictions on state legislation.

Epstein seriously misconstrues the constitutional clause on which his argument rests. He admits that his view of the takings clause "does not take into account the actual historical intention of any of the parties who drafted or signed" the Constitution, and he expressly rejects the use of "extensive secondary material" to determine the Framers' intent. At the same time, however, Epstein recognizes that the view that the meaning of constitutional provisions can change over time—that it is not fixed by the intent of the Framers—is "an invitation to destroy the rule of law." He attempts to avoid the resulting dilemma by arguing that "the best evidence of textual intention is the language of the text itself"—which is certainly correct—and that we should look to "historical sources" only to "understand the standard meanings of ordinary language" as used in the Constitution, not to determine the actual "collective purposes . . . that secured its passage"—which is nonsense.

Epstein's approach enables "interpreters" to give people's words a meaning contrary to the one they are known to have intended. His mistake derives from his belief that words have meaning apart from what they are intended to communicate. This belief grounds his

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

argument that it is possible to be loyal to a law's "text as written" without being loyal to the lawmakers' known "views of the consequences it entailed."

Epstein denies that treating the takings clause as a "self-contained *intellectual proposition*," with a meaning independent of the understanding of its writers and ratifiers, is "necessarily a rejection of the Framers' intention." It does, however, permit such a rejection, by making the Framers' intention irrelevant and thus depriving the takings clause of fixed meaning. Epstein seems to recognize and accept this when he says, in agreement with Justice Brennan, that the meaning of "specific clauses" in the Constitution "was left to future generations." The result is that in the space of six pages he manages to reject the valid argument—fatal to his system—with which he began, that leaving the meaning of the Constitution to "each new generation . . . is an invitation to destroy the rule of law."

The meaning of the takings clause is far from clear. It is very difficult to state a sensible and administrable principle of compensation—but then, it is always difficult to state sensible and administrable principles. If minimal integrity could be introduced to constitutional law, however, most of the problem would be eliminated by the recognition that the takings clause is not applicable to the states. The clause would also cause few problems, of course, if it were treated not as a judicially enforceable provision of law, but as a moral exhortation or useful reminder to legislatures, for which role it, like most of the Bill of Rights, is better suited. In any event, the history of the adoption of the takings clause indicates that it was understood, like most other constitutional restrictions, to have a very limited function. The federal government, the Framers probably meant only to say, should not meet its needs through confiscation.

All government acts can adversely affect property values, but not all diminutions of value are compensable. Some diminutions must be compensable—otherwise the clause has no meaning—but it is difficult to state a useful means of distinguishing them. Practicality may require that compensation be limited to cases where the federal government takes possession of or asserts title to property. There is little to be said for such a rule—except that the alternative may be a system such as Epstein's, effectively turning vast areas of policymaking over to judges.

Epstein acknowledges that his standard for judicial review permits, indeed requires, "a level of judicial intervention far greater than we now have, and indeed far greater than we ever have had." This does not mean, he insists, that he advocates "judicial activism

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

in cases of economic liberties." Epstein apparently believes that he has discovered a system in which judges have much to do, but all of it is strictly limited by the dictates of inexorable logic. His system's axioms, unfortunately—that the takings clause applies to the states and that it has inherent meaning apart from its intended meaning—are simply not valid. Even if they were valid, the "necessary implications" that he derives from the takings clause are less the result of syllogistic reasoning than of his policy preferences. A judge confined not by the intended meaning of the constitutional text, but only by Epstein's notion of the text's necessary implications, would find himself very little confined, and a judge with as much to do as Epstein would give him would probably find it hard to believe that he was confined at all.

Where Left meets Right

Epstein's theory of constitutional interpretation is indistinguishable from the theory of Ronald Dworkin, his liberal counterpart. Dworkin and Epstein are equally enthusiastic about judicial intervention in the political process; they differ only in that Dworkin would have the Supreme Court enact John Rawls's egalitarian program because it is required by natural law and therefore the Constitution, whereas Epstein would have the Court enact Robert Nozick's libertarian program on a similar basis. Dworkin's principal contribution to constitutional theory is his recommendation that courts interpret the Constitution not in accordance with what he calls the Framers' "conceptions"—what they actually intended—but in accordance with their supposed "concepts," abstractions that permit judges to enact Dworkin's policy preferences in the name of the Constitution.

Epstein, precisely paralleling Dworkin, would have courts decide constitutional cases not on the basis of the Framers' specific purposes, but on the basis of the supposed "necessary implications derived from the constitutional text and the underlying theory of the state that it embodies," which would effectively give judges a free hand. Unsurprisingly, the "necessary implications derived from the constitutional text" turn out, according to Epstein, to deviate in no respect from Epstein's policy preferences, just as the "concepts" of the Framers happen, according to Dworkin, to deviate in no respect from Dworkin's policy preferences. Macedo makes exactly the same move from the knowable and definite to the hopelessly abstract when he recommends that courts decide constitutional cases not on the basis of the Constitution's intended meaning, which he finds un-

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

knowable, but on the basis of its "moral aspirations" and "our best understanding of justice," the functional equivalents of Dworkin's "concepts" and Epstein's "necessary implications."

Depriving the Constitution of determinable meaning and making it a charter for judicial enforcement of an abstraction obviously grants Supreme Court justices substantial, if not unlimited, policy-making power. How can such power be reconciled with the system of decentralized democratic government under the Constitution? Proponents of judicial activism, whether of the left or the right, deal with this problem, too, in exactly the same way. They argue, first, that judges do not decide constitutional cases on the basis of their personal policy preferences, even if they are not strictly bound by the Constitution. Judicial discretion is limited and therefore consistent with democracy, they contend, because judges are supposed to decide cases on the basis of principle, even if not exactly on the basis of the Constitution. As a second line of defense, they argue that in any event the virtues of democracy and majority rule are easily overstated, that the function of constitutionalism, after all, is to frustrate majority rule.

The argument that the policymaking power of judges is limited by the requirement that they decide controversial issues on the basis of principle fails for two reasons: we lack accepted principles to settle controversial issues (otherwise they would not be controversial), and we lack a practical means of enforcing the supposed requirement. Problems of social choice are difficult because we have many different principles and they, like the interests they are meant to protect, inevitably come into conflict. We have a principle protecting free speech, for example—but other principles protect quiet, safety, and order. These goods cannot, as an economist might say, simultaneously be maximized. The unavoidable conflict of legitimate interests can be resolved only by making value judgments, by evaluating and weighing the conflicting principles. The essence of self-government is that these valuations and trade-offs are to be made in accordance with the collective judgment of the people, not by a king, priest, or council of sages.

Even if a dispute-resolving principle could be identified in a controversial case, we have no way of forcing judges to abide by it. If judicial review were confined, as Hamilton and Marshall suggested, to enforcing a few well-defined restraints on government—even if they were not all quite so well defined as the two-witness requirement in trials for treason—it might be feasible to punish judges who went beyond enforcing such restraints. Hamilton assured

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

the ratifiers of the Constitution that impeachment would be readily available to prevent judges from abusing their offices. The failure to remove Justice Samuel Chase for his flagrant displays of Federalist partisanship from the bench, however, convinced Jefferson that impeachment was "not even a scare-crow."[2] That it has remained totally ineffective is shown by our failure to bring impeachment proceedings even on the basis of the clearest examples of gross judicial misbehavior, such as the Court's contemptuous treatment of the 1964 Civil Rights Act.[3]

But even if we were willing to impeach judges for flouting the law and abusing judicial power, as we should be, it would be inappropriate to do so for failing to apply standards as ill-defined or undefined as those suggested by proponents of judicial activism. Just as it is unrealistic to suppose that such nebulous standards as Dworkin's "concepts" of the Framers, Epstein's "necessary implications" of the constitutional text, or Macedo's "moral aspirations" of the Constitution limit judicial discretion, it would be improper to suggest that judges could be sanctioned for failing to abide by such standards.

The absurdity of the claim that such alleged standards can limit judicial discretion is illustrated by trying to imagine judges attempting to use them. Imagine, for example, Justices Brennan and Thurgood Marshall cogitating on whether they should hold capital punishment unconstitutional. Brennan might say to Marshall: "According to Professor Dworkin, we are not authorized to invalidate policy choices simply on the basis of our personal preferences. If something is not explicitly prohibited by the Constitution, that is, is not ruled out by the Framers' specific conceptions—and capital punishment,

---

[2] "Experience has proved," Jefferson said, "that impeachment in our forms is completely inefficient," with the result that judges are given "a freehold and irresponsibility in office."

[3] In Title IV of the Act, for example, Congress carefully defined "desegregation" as "the assignment of students to public schools without regard to race," and repeated for emphasis that desegregation "shall not mean the assignment of students to public schools in order to overcome racial imbalance." In *Swann* v. *Charlotte-Mecklenburg Board of Education* (1971) the Court in a unanimous opinion written by Chief Justice Burger nonetheless upheld a district court "desegregation" order requiring the assignment of students to schools on the basis of race to overcome racial imbalance. Apart from grossly misstating the facts of the case throughout the opinion, the Court stated, without supporting citation and clearly contrary to fact, that the legislative history of the Act showed that Congress did not mean to apply its definition of desegregation to the South. See my *Disaster By Decree: The Supreme Court Decisions on Race and the Schools* (1976). In *Regents of the University of California* v. *Bakke* (1978) and *United Steelworkers* v. *Weber* (1979), the Court held, respectively, that the Act's prohibitions of race discrimination by federally assisted institutions (Title VI) and in employment (Title VII) did not apply to discrimination against whites.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

awkwardly enough, is not only not prohibited but explicitly and repeatedly provided for in the Constitution—we ought to prohibit it only when it is inconsistent with the Framers' unspecified concepts. Where do you think that leaves us on capital punishment?" Marshall might reply: "As you know, the Eighth Amendment—applicable to the states through the Fourteenth Amendment—prohibits 'cruel and unusual punishment.' What could be crueler than killing someone? And we've certainly made capital punishment unusual; indeed, we effectively abolished it for more than a decade. So there's no question in my mind that capital punishment is prohibited by the Framers' concepts. What do you think?" "I think," Brennan could then respond, "that as usual you're absolutely right; the Constitution, properly interpreted as recommended by Professor Dworkin, clearly prohibits capital punishment. So we needn't worry that we're substituting our views for those of the American people." One could repeat this exercise, substituting Epstein's "necessary implications" for Dworkin's "concepts of the Framers," and confidently predict no change in result.

Judicial activism and democracy

Proponents of judicial activism, left and right, share a profound skepticism about, not to say hostility to, majority rule. For that reason they argue that a high degree of judicial intervention in the political process is desirable. The purpose of constitutionalism, they remind us, is to limit majority will in the name of individual rights. Individual rights, of course, are unambiguously good things, not dependent on mere majority acquiescence.

Majoritarian policymaking "has appeal under some circumstances," Justice Brennan grudgingly concedes, but he believes that "it ultimately will not do," because majorities cannot be trusted. Denouncing "the majoritarian myth," Macedo—like Brennan—argues that "direct democracy and majoritarianism were decisively rejected by the Framers." Epstein, noting "flaws in the democratic process," argues that "the Constitution clearly does not endorse any version of popular democracy." The most he is willing to concede to legislatures is that the Constitution "does not assume that [they] have no task to perform."

Proponents of judicial activism are of course correct that the Framers did not set up a system of direct democracy. The Constitution created a republican system of *representative* democracy; but nothing in the Constitution or its history suggests that majority rule was to be limited by granting policymaking power to judges. The

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

Constitution does not even provide explicitly for judicial review itself, much less judicial review not based on definite constitutional provisions.

The Declaration of Independence, it is true, speaks of unalienable rights granted by the Creator, but that was a revolutionary manifesto attempting to justify defiance of law, hardly fit material for the business of judges. By contrast, the Constitution—the foundation of a government and legal system—contains no such reference. Creator-endowed unalienable rights, unfortunately, cannot be Creator-enforced; the grim and bloody tale that is human history indicates that would-be human rights are all too alienable. Government-granted rights are government-enforced; in a democracy all such grants come from no other source than the people, and they continue only with the approval of the people.

For this reason Epstein is right to suggest that democracy has its flaws; Macedo's claim that "making government accountable to the people is not sufficient to secure either order or the protection of liberty and rights" also cannot be disputed. Democracy does not make rights secure—the majority can change laws, to bestow rights and to take them away—but experience indicates that it makes them as secure as they can be made. More immediate popular control of policymaking is not necessarily better than less, but more power in the hands of unelected and irremovable officials of the central government most certainly does not increase individual security.

Macedo rightly asserts that those who favor judicial restraint value "majority power over individual liberty," but he fails to understand that judicial activists value judicial power over individual liberty. The former choice is better. Judges are simply lawyers in robes, people skilled only in the manipulation of language; they are not embodiments of moral virtue. Greater individual security and liberty arise not from a futile search for an ultimate authority better and wiser than a majority of our fellow citizens, but from recognizing and accepting that collectively we hold power over one another and must therefore develop and inculcate habits of tolerance and self-restraint.

Challenges to constitutionalism

Granting that the Framers' intent in adopting a constitutional provision can be ascertained, proponents of judicial activism often ask why that intent should be authoritative. Why should we consider ourselves bound by the views of a relatively small group of

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

eighteenth-century white males who were not nearly so well placed as we are to understand today's problems? The question is a good one, but its challenge is to constitutionalism, not to the proposition that the Constitution must be taken to mean what it was intended to mean if judicial review is to be consistent with the judicial function of interpreting rather than making the law.

Justifying constitutionalism—the limitation of contemporary self-government by prior authorities—is indeed a difficult matter. There are two possible justifications: an alleged need to put the better or calmer self in control of the worse or impassioned self, and an alleged need to compensate for defects inherent in self-government. The first theory is illustrated by Odysseus's command that his crew tie him to the mast to prevent him from being lured to destruction by the Sirens' song, which he knew he would find irresistible. Proponents of judicially enforceable constitutionalism—generally not strong advocates of democracy—imagine that majorities are given to periods of passion when they must be restrained.[4] The restraints must come either from wise minorities—which is inconsistent with self-government under conditions of political equality—or from the majority itself during one of its better moments.

When Odysseus heard the Sirens and ordered his men to untie him from the mast, on what basis did they determine that his earlier order was more authoritative? Earlier instructions do not ordinarily take precedence over later ones from the same source. Similarly, how is it possible for today's majority to be bound by the commands of an earlier one? Why cannot a majority simply change by majority rule any previously imposed restraint on majority rule, as was in fact done in adopting the Constitution? If the delegates to the Constitutional Convention could decide to ignore the unanimity requirements of the Articles of Confederation, a majority today can likewise ignore the requirement for more than a majority vote to change the Constitution.

The second justification for constitutionalism is perhaps more substantial: the view that majority rule can in some circumstances produce results that the majority does not want or considers less than optimal. A balanced-budget amendment (imposing a constitutional limitation on federal spending), for example, might be justified on such grounds. It may be that the constitutionally protected

[4] Hamilton thought that the people were subject to "occasional ill humors" that, "though they speedily give place to better information, and more deliberate reflection, have a tendency, in the meantime, to occasion dangerous innovations in the government, and serious oppressions of the minor party in the community."

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

pursuit of self-interest through the political process will otherwise inevitably produce a higher level of public spending than the majority wants.

If one believes that majority rule is the best available alternative to settling disputes by physical force—the majority would presumably be able to exercise the greater force—and that useful principles limiting majority rule are extremely difficult to state, one is led to the view, heretical in the United States, that constitutional limitations are not generally good ideas. Even our very short and generally nonrestrictive Constitution, one may note, manages to create unnecessary problems. It created such a problem, for example, when President Nixon wanted to appoint Senator William Saxbe as his attorney general. Because the pay of the attorney general had been raised in the existing session of Congress, along with the pay of other federal officials, the "emoluments clause" clearly prohibited the appointment, even though Nixon wanted it, Saxbe wanted it, and no living person objected. Even though real constitutional questions are extremely rare, they can arise, sometimes producing unwelcome restraints.

Foolish expectations

The arguments used to justify judicial activism of the right, I have tried to show, are no more valid than—indeed, are not distinguishable from—the arguments used to justify judicial activism of the left, even though the Right's preferences for individual liberty and minimal government are more consistent with the maintenance of a free and prosperous society. The Left's advocacy of judicial activism, however, can be explained (though not justified) by expediency. Liberals can support judicial policymaking without believing that social problems are soluble on the basis of unequivocal principles rather than competing values, and without generally rejecting majority rule; they need only know that for four decades the courts have given them (and can be expected to continue to give them) what they could obtain in no other way—enactment of major portions of their political agenda. Advocacy of judicial activism of the right, on the other hand, is not only mistaken but foolish, as the Right can have no similar expectation.

Justice Antonin Scalia has pointed out that the "development of lawyers (and hence of judges) through a system of generally available university education which, in this country as in others, more often nurtures collectivist than capitalist philosophy" means that defenders of economic liberty "would be foolish to look for Daddy

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

Warbucks on the bench." Academia is not only the molder of judges but also, along with the media, their source of approval and protection. Academics and the members of the media support, encourage, and defend judicial activism of the left by labelling left-wing judicial activists as heroes[5] and doing all they can to spread the myth—which some of them may even half believe—that the resulting decisions have something to do with the Constitution. Judicial activism of the right, however, they would denounce with equal or greater vigor, and with the added virtue of accuracy, as judicial usurpation of legislative power inconsistent with republican self-government.

Justice Scalia has also argued, less persuasively, that without the Supreme Court's abandonment of "substantive due process in the economic field" in recent decades, judicial activism of the left "might have gotten even worse." It is doubtful that judicial activism of the left could have gotten any worse. A realistic assessment of the Court's work makes it impossible to believe that Justice Brennan, for example, ever votes on any basis other than his political views. I cannot imagine that he would refrain from voting to enact a liberal policy because other justices refrained from voting to enact conservative policies; he would simply see the latter votes as praiseworthy opposition to conservatism.

Justice Scalia may be right, however, in fearing that "perhaps even in the short run," advocacy of judicial activism of the right may reinforce the public's "mistaken and unconstitutional perceptions of the role of the courts in our system," which will make it harder to combat judicial activism of the left. We should oppose judicial activism, of the right as well as of the left, because whatever may be the best form of government, government by a committee of unelected and irremovable lawyers pretending to interpret the Constitution must be among the worst. Conservatives, at least, have no reason to believe that it is likely to improve on government with the consent of the governed.

---

[5] See, for example, Jack Bass, *Unlikely Heroes* (1981), which is described as "the dramatic story of the Southern judges of the Fifth Circuit who translated the Supreme Court's *Brown* decision into a revolution for equality."

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

Farm policy follies

JAMES BOVARD

FEDERAL FARM policy is trampling individual rights, sacrificing the poor to the rich, and giving congressmen and bureaucrats vast arbitrary power over American citizens. For almost sixty years the U.S. government has stubbornly repeated the same mistakes in its agricultural policy, mistakes that are slowly strangling American agriculture. Farm policy splendidly illustrates what happens when politicians try to plan and control economic activity.

The federal government spends roughly $25 billion a year in subsidies, and American consumers pay over $10 billion more for their food than they would in a free market. For the same aggregate cost, the government could give every full-time subsidized farmer two new Mercedes each year. With the $250 billion that government and consumers have spent on farm subsidies since 1980, Uncle Sam could have bought every farm, barn, and tractor in thirty-four states. The average American head of household now works almost one week a year simply to provide welfare to fewer than a million farmers.

In 1930, after the federal government had tried to drive up wheat prices, the *New York Times* surveyed the ensuing wreckage of agricultural markets and concluded: "It is perhaps fortunate for the country that its fingers were so badly burned at the very first trial of the scheme." Yet despite an unbroken string of failures, the federal government continues to disrupt agricultural markets. The trouble with farm programs is not that they are malfunctioning now, but rather that they have *never* worked well. Farm policy is a classic

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

case of politicians trying to control what they do not and cannot understand.

Federal agricultural policy has long been a Sisyphean political struggle against an economic trend—the gradual, inevitable decline of crop prices. Farm programs try to restore "parity," which is arbitrarily defined as the ratio between crop prices and industrial prices that existed in 1910-1914. Yet prices for wheat, sugar, oats, and cotton have been steadily declining in real terms for over a century and a half, and as economist Julian L. Simon has shown, crop prices in general have plummeted relative to industrial wages. The fall in crop prices, moreover, is not insidious, since advances in agricultural technology have driven down production costs. Yet politicians have perennially seen these lower prices as proof of the American economy's inequity, and of the need for farm subsidies.

Federal agricultural programs have consistently paid farmers more than market value for their crops. This policy causes surpluses, and Congress then creates other programs in order to dump, distribute, or repress them. This is agricultural-policy history in a nutshell. American farm policy is largely based on the assumption that price does not affect how much farmers produce or consumers buy, and that there is thus no reason not to be as generous as possible to farmers. But political manipulation of prices disrupts supply and demand and produces inefficient markets. Robert Reich, Lester Thurow, and other prominent advocates of an intrusive industrial policy have cited federal agricultural policy as proof of government's superior ability to manage the private sector. But the real lesson of farm policy is that congressmen have little or no political incentive to correct their economic mistakes.

Incoherent farm programs

While many people speak of farm programs as a homogeneous whole, different farm programs have different effects, rationales, and goals. The government wool program, for instance, hands out money with no strings attached. By contrast, the tobacco program imposed feudal controls on farmers and makes it a federal crime to grow tobacco without a license. Benefits from the federal soybean program are minimal, while every year the cotton and rice programs give commercial farmers hundreds of thousands of dollars apiece. Some policies are intended to double or triple food prices, while others cause taxpayers to compensate farmers generously regardless of market price. The differences among farm programs stem not from differences in the subsidized commodities, but largely

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

from the accidents of politics. Often the all-important question is merely which senator or congressman had the most clout, or which farm lobby the most money, at the time the programs were created or last revised.

"Prosperity through organized scarcity" is the goal of many a farm program. In thirty-three of the last thirty-five years, the U.S. Department of Agriculture (USDA) has tried to "balance supply and demand" by rewarding farmers for leaving their land fallow. In 1988 USDA paid farmers not to plant on 78 million acres—the combined size of Indiana, Ohio, and most of Illinois—in an effort to drive up world grain prices. Such set-asides are based on the idea that the government can solve farmers' problems by reducing the size of their harvests.

Imbalances in supply and demand, however, are greatest for the crops that politicians insist on managing. As a recent USDA study concluded, "Excess capacity exists for . . . the commodities that have traditionally been given the most policy attention. . . . Excess capacity is a much more serious problem for the seven major crops (wheat, corn, oats, barley, sorghum, cotton, and soybeans) than for the rest of U.S. agriculture." USDA's *Farmline* magazine observed in November 1987 that unsubsidized crops as a whole had an average excess capacity of less than 6 percent, while the corresponding figure for the seven major subsidized crops was 22 percent; for wheat it stood at 31 percent. In short, the government introduces supply controls only after it has mismanaged price controls. We have had perpetual set-asides for seven crops grown in America, largely because Congress has insisted on perpetually paying farmers more than those few crops are worth. Government first artificially raises the price and then attempts to lower production.

Because federal price supports usually prevent crop prices from falling to market-clearing levels, export subsidies are necessary to dispose of surpluses. Export subsidies and credits exceeded $6 billion in 1987. In 1986 USDA paid up to four times the world price in order to boost rice exports. The U.S. is paying three times the world price to dump American butter on world markets, and four times the world price to dump American sugar abroad. Many such exports could more cheaply be burned or dumped into the ocean. In 1987 USDA paid farmers $4.38 a bushel for wheat—and then received less than $2 a bushel when it sold that wheat to the Soviets.

Each year USDA marketing orders force farmers to waste roughly 500 million lemons, one billion oranges, 70 million pounds of raisins, 70 million pounds of almonds, and millions of plums, nectar-

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

ines, and other fruits. The California countryside is sometimes littered with mountains of rotting oranges—monuments to USDA's love of stable markets. The government gives a majority of the current growers of several kinds of fruits and nuts the power to outlaw competition, to force growers to abandon much of their crop, or to prohibit new entry into the field. In order to preserve federal control, USDA effectively bans new technology that would boost fruit sales and benefit both growers and consumers. USDA assumes—although many California citrus growers disagree—that farmers gain more from higher prices than they lose from discarding much of their harvest.

The dairy program typifies Congress's contempt for efficiency. In 1986-1987 the federal government paid farmers almost $2 billion to slaughter more than a million cows to reduce dairy surpluses. But Congress simultaneously maintained dairy price supports far above the market-clearing level, thus perpetuating the surplus. Similarly, new growth hormones have been introduced recently that will boost milk production per cow by up to 30 percent; not surprisingly, several congressmen have denounced the technology for destabilizing the government dairy program. The influential Wisconsin Republican Steve Gunderson, for instance, declared in one 1986 hearing that "the dairy industry needs more productivity, more milk, like a drunk driver needs another drink."

Federal agricultural credit programs have been among the worst enemies of competent farmers. The programs have spurred boom-bust cycles in land values, helped bankrupt many farmers, and created high entry barriers for prospective farmers. The Farmers' Home Loan Administration was created to help the struggling family farmer, but ended up bankrolling John DeLorean's Deluxe Motor Car Factory, providing $50 million to a single California farm (now bankrupt), and giving almost a billion dollars in subsidized loans to already-bankrupt farmers in 1985 alone. With each federal farm-credit disaster, unfortunately, government dominance of agricultural credit has increased, so that now the federal government effectively controls half of all farm debt.

The impossibility of planning

Federal agricultural policy is based on the mistaken belief that central planning is superior to private decisionmaking. There are striking parallels between American agricultural policy and Eastern European industrial policy. Both are designed almost solely for the

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

benefit of producers, with evident contempt for consumers. Government programs reward producers for neglecting quality and maximizing the quantity of their output; payments do not depend on whether a product is sold, but rather on whether it is produced. Individual prosperity often depends more on political connections than on entrepreneurial talent. In Eastern Europe, there are stockpiles of unused, often worthless manufactured goods; in the U.S., there are mountains of surplus cheese, butter, and vermin-ridden wheat and corn. Eastern Europe's five-year plans and America's five-year farm bills both routinely set prices for domestic products without regard for world markets. Although both Eastern European industrial and American agricultural plans are usually outdated by the time they finally reach print, politicians implement them anyway. Federal agricultural planners may not be socialists, but they share with Eastern European planners a faith in their own plans and an apparent lack of concern for individual rights.

The federal government's misappraisals of markets have repeatedly devastated farmers. In 1929 the Federal Farm Board tried to corner the U.S. wheat crop and thereby destroyed its export markets, helping to wreck the world trading system. In 1973, after two droughts in the Soviet Union, USDA announced that a new export era had arrived and advised American farmers to plant till they dropped; subsequent overproduction by American farmers once again sent prices tumbling. In 1981 USDA was confident that an era of world food shortages had arrived, and it endorsed a farm bill that rapidly decimated American farmers' competitiveness by pegging domestic prices far above world prices.

The people who make farm policy are far less sophisticated businessmen than the farmers themselves. As more and more farmers are using computers to adjust their schedules and operations daily, USDA is still plodding along with five-year plans. Farmers now shift crops at a few days' notice, but USDA is still devoted to maintaining the dominance of the crops that were popular in the 1930s, when the major farm programs were created. Computer systems and microsensors are radically changing the use of irrigation and pesticides, but USDA programs continue indiscriminately blanketing the land with federal dollars for anything vaguely resembling conservation.

USDA's ability to manage the agricultural economy depends on its ability to predict future developments. But USDA's inability to foresee the future is apparent in the inaccuracy of its budget forecasts. USDA predicted that the 1981 four-year farm bill would cost

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

$12 billion; instead, it cost $60 billion. The 1985 five-year farm bill was supposed to cost $52 billion; instead, it has already cost over $90 billion, and it will probably cost more than $120 billion in all.

Though some inaccuracies are to be expected in long-range forecasts, even USDA's annual budget forecasts are grossly inaccurate. From 1972 to 1986 USDA's actual annual spending was 75 percent higher than the total of the agency's annual budget predictions. Between 1981 and 1986, its estimates of annual federal spending on the corn program were off by an average of 154 percent each year. USDA persistently underestimated dairy production and overestimated dairy consumption, thus perpetually underestimating the size of the dairy surplus.

USDA has done nothing to improve its forecasting techniques, despite their dismal failure. As one recent General Accounting Office (GAO) report concluded, "USDA has not performed any evaluation to determine the extent to which economic assumptions account for the misestimates in the commodity budget estimates. . . . Although USDA recognizes that it has had accuracy problems with the budget estimates, no one management structure could act to see that improvements are made."

Farm programs are often praised for stabilizing agricultural markets. But as University of Minnesota agricultural economist G. Ed Schuh observes, "Ultimately it is the instability of government policy and government intervention that cause the instability in commodity markets." Planting time often comes before USDA and Congress agree on a farm program. Farmers have repeatedly been stunned as Congress enacted legislation in March or April that radically changed the economic factors dominating that year's harvest. As Rep. Byron Dorgan observes, "It just drives farmers crazy year after year to see us lurch in one direction and lurch back in another direction and then zig here and zag there."

Theorists who support government economic intervention assume that the government will carefully and wisely select its economic targets. But the history of farm policy belies this view of government as an economic sharpshooter; USDA does more harm than good through its clumsy interventions. As the Council for Agricultural Science and Technology reported in 1983, farm programs are blunt instruments lacking the precision necessary to do the most good. When USDA and Congress decide that farmers have a problem, they usually favor overkill; they reason that if one farmer needs a bailout, then, to be safe, it is necessary to bail out all farmers who grow the same crop or are in a comparable situation. In 1984, for

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

example, Congress mandated that USDA provide disaster handouts to farmers in counties adjacent to counties that are officially declared disaster areas. Each farm program seeks to solve a "problem" while providing the most money to the greatest number of farmers.

On March 12, 1933, the *New York Times* reported that Agriculture Secretary Henry Wallace and a group of farm lobbyists were urging President Roosevelt to ask for "farm dictator powers" to solve the farm crisis. Now, fifty-five years later, the Secretary of Agriculture is still effectively the farming czar. With a stroke of his pen, he can drive crop prices up or down, spend fifty million dollars to buy up almost any farm commodity he chooses, change regulations affecting the profitability of a hundred businesses, overturn decisions of USDA's administrative-law judges, shower benefits on favored states and congressional districts while neglecting other areas, and annually change the rules that govern farms.

In June 1986 Agriculture Secretary Richard Lyng had a breakfast meeting with Dwayne Andreas, the president of Archer Daniel Midlands. Lyng and Andreas apparently had a very pleasant breakfast, since a few weeks later Lyng announced that USDA was giving Archer Daniel Midlands $29 million worth of free corn in order to make ethanol. The public does not benefit from this program, any more than it would benefit from a program giving Mobil Corporation a million barrels of oil to refine into gasoline. The ADM bonanza was the biggest single handout in USDA history—yet because it involved agriculture, this corporate welfare program was not criticized by the media.

The impact on farmers

Though agricultural policymakers have long insisted that farmers could not survive without federal subsidies, the vast majority of crops grown in America have never been federally subsidized. The "farm problem" is largely a dairy, cotton, wheat, corn, and rice problem.

Even with the profusion of federal aid, farmers of federally subsidized crops have generally done no better than farmers of unsubsidized crops. As the Republican minority report on a 1956 farm bill noted, "The average price of unsubsidized commodities has been higher (as measured by parity price relations) in every year since 1940, except one, than the price of so-called basic crops." In the 1970s farm programs were comparatively inactive, and there was no clear difference between the incomes of subsidized and unsubsidized farmers. Bankruptcy rates in the 1980s have been higher among farmers of subsidized crops than among farmers of unsub-

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

sidized crops, and farmland values fell twice as much in the heavily subsidized Corn Belt as they did in areas where farmers produced unsubsidized crops.

Government subsidies have become so lavish in recent years that USDA often spends as much on subsidies as the entire subsidized crop is worth. In 1987 the corn program cost taxpayers $12 billion—more than America spent on its 20 million food-stamp recipients—while the total value of all corn produced was only $12.1 billion. Federal subsidies have actually exceeded the market value of the sugar, honey, wool, cotton, rice, and mohair crops in recent years.

Even more striking is a comparison of federal subsidies with the net cash income of farmers for each subsidized crop. In 1985 sheep farmers lost $73 million, while the federal government spent $109 million on wool subsidies; in 1986 the federal wool subsidies were $99 million and sheep-raising profits were only $15 million. In 1986 rice farmers' net cash income was $236 million—barely one-fourth of the cost of the federal rice program. The dairy program's cost to consumers and taxpayers has exceeded dairy farmers' net income every year since 1980. Total government subsidies, despite being given for only a small percentage of farm products, have approached or exceeded net farm income every year since 1983.

Farm programs cost consumers and taxpayers far more than they benefit farmers. In 1983 net farm income was $12.7 billion. Federal outlays for agriculture exceeded $20 billion, and according to an estimate by University of Chicago economist D. Gale Johnson, American consumers paid $13 billion more for food than they would have in the absence of federal subsidies and trade barriers. In 1987 net farm income was estimated at $46 billion, while federal farm programs cost over $30 billion and food cost consumers $13 billion more than it should have.

The more welfare American farmers have received, the less competitive they have become. Every crop on which USDA has lavished benefits has ended with either strict controls or huge excess capacity. USDA does not reward farmers for improving their capital base, but for playing by the government's rules—and therefore keeping their land idle or continuing to grow surplus crops. Business decisions increasingly aim to please the federal government, so they need not make productive sense.

Federal agricultural policies have driven up farmers' costs of production and made the U.S. less competitive internationally in selling crops in which American farmers have natural comparative advantages. The price of a patch of land in Iowa largely depends on

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

whether the land has a history as a "base" for USDA benefit programs—i.e., whether a previous owner enrolled it in order to qualify for more federal benefits. Expected federal benefits are thus included in the price and rental value of farmland. The more federal benefits for which crops grown on the land are eligible, the higher the price of the land, and hence the higher the farmers' cost of production.

USDA, by paying to keep productive land idle, discourages the use of the most productive land and increases the average cost of production. The Agricultural Policy Working Group estimates that set-asides increase the average cost of production for a bushel of corn by 33 cents. Since the variable cost of production for the most efficient corn farmers is less than $1.25 a bushel, the set-asides greatly reduce American competitiveness.

Discussions of farm policy usually focus on the beneficiaries, paying little attention to the victims of federal intervention. And there are victims. USDA estimated that the 1987 farm program, by paying farmers to leave over 70 million acres idle, reduced the number of farm and farm-related jobs by 250,000. In addition, by driving American dairy prices to triple the world price levels, USDA helps cause calcium deficiencies among the poor and osteoporosis among the elderly. The squandering of capital and labor in agriculture, moreover, decreases American manufacturing and service exports by $10 billion a year, according to a study by former USDA chief economist Robert Thompson.

A recent study by Thomas W. Hertel, Thompson, and Marinos E. Tsigas of Purdue University sheds more light on the true cost of farm subsidies. The Purdue study estimates that each agricultural job saved by subsidy programs costs the U.S. economy and taxpayers over $230,000 each year. It concludes that abolishing federal farm programs would cost farmers far less than it would save taxpayers and consumers.

The distorted political perspective

To visualize how farm programs are made, imagine a team of engineers building a single machine, but with every engineer thinking that his gear or lever is the only important one. Each engineer insists on inserting the largest, gaudiest, heaviest gear into the machine, with no concern for how everything fits together. That the machine does not function is irrelevant, for no individual is held responsible for collective failure.

Agricultural policy is usually discussed as if it were made by a group of experts who calmly weigh various economic possibilities,

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

and then decide with Solomonic wisdom how to strike the perfect balance. In reality, agricultural policymaking has almost nothing to do with economic planning and almost everything to do with dealmaking.

Anyone who has faith in Congress's ability to manage the economy should read the congressional debates on a farm bill. Each hour of congressional agricultural debates plumbs new depths of nonsense, with awesome leaps of logic that would make any country lawyer green with envy. House Agriculture Committee Chairman Kika de la Garza unwittingly crystallized the situation when he declared in 1985, "I heard a quotation once that said, 'Facts are the enemy of truth.' So forget all the facts and listen to the truth." And the House of Representatives followed de la Garza's advice.

Indeed, facts often fly out the window when farm-state congressmen are speaking. Thus Rep. de la Garza defended the peanut program in 1985 by declaiming, "We cannot send the wrong message out there to the farmers that are dying on the farms—and make no mistake, the peanut growers are in the same position as corn and wheat farmers." In fact, the bankruptcy rate among peanut farmers (whom the government practically guarantees a lucrative profit) was 90 percent lower than the rate among other farmers, and peanut growers were enjoying far higher returns than corn or wheat farmers. Similarly, Jamie Whitten, chairman of the House Appropriations Committee, declared in December 1987 that "about half the farmers are either bankrupt or on the verge of bankruptcy." In fact, USDA statistics show that only 14 percent of farmers were under severe financial stress at the close of 1987. When the chairmen of the House Agriculture Committee and the House Appropriations Committee resort to such flagrant misrepresentations, it is no wonder that congressional agricultural policy often seems divorced from reality.

The congressional process makes this result almost inevitable. Ron Phillips, press secretary of the committee from 1983 to 1987, described how the Senate Agriculture Committee set prices in the 1985 farm bill: "You're sitting around a table and everyone is throwing out numbers. You've got this jumble of numbers that has no meaning." Records of the House Agriculture Committee's 1985 mark-up sessions show congressmen proposing prices randomly, juggling numbers to try to find the price that seems best to the most congressmen. The prices set by the final bill were merely those that sounded good to a sufficient number of relatively ignorant congressmen. The Senate's 1985 farm bill actually included two contradic-

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

tory sets of federal target prices for subsidized products for the years 1986-1990, but the Senate passed the bill anyway.

The market sets the price for American wheat according to domestic and foreign demand, the size of the harvest and the carry-over from previous years, the quality of the wheat, and other relevant factors. Congressmen, by contrast, set the price of wheat according to the number of donations received from the wheat lobby, the level of concern over budget deficits, the number of Urban Development Action Grants for which Dakota congressmen have traded their votes, and the media climate at the time that the farm bill is debated. Then, when congressionally decreed prices lead to instability and huge surpluses, farm-state congressmen solemnly conclude that markets cannot be trusted and need more government supervision.

The essence of agricultural programs is the political redistribution of income—redistribution according to political clout. Cotton farmers have usually been treated far more generously than other subsidized farmers, largely because Southern congressmen often control congressional agriculture and appropriations committees. To congressmen, votes and campaign contributions are more important than supply and demand. If politicians wanted market-clearing prices, they would let the market set prices. Politicians set prices to fill ballot boxes, not to balance markets. As Wheeler McMillen observed in 1929, "The farm problem for politicians is how to get the farm vote."

Farm congressmen usually view any program that raises farm income as a success, whatever its cost. Some congressmen, for instance, are bragging about the success of the 1985 farm bill's marketing loans for rice. As Sen. David Pryor declared in 1987, "Our [rice] program is working. . . . The program is beginning to put money in the farmers' pockets. . . . Now the buyers are calling the farmers and they are being mighty nice—and that's a change." But the rice program's cost has tripled since 1984, while rice export revenue is down sharply. Since 1985 the rice program has cost more than one million dollars per full-time rice farmer—yet many farm congressmen see it as a model for other programs. Congressmen judge farm programs not by the costs to nonfarmers, but solely by the benefits to farmers.

Most commentators on farm policy point out the failures of the farm programs and exhort congressmen to reform and repent. But farm programs are full of waste, fraud, and abuse largely because many congressmen want them to be. The problems with farm programs have long been obvious, and many congressmen have long re-

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

sented GAO and USDA Inspectors General for showing where the bodies are buried. In economics, a program is desirable if it productively uses scarce resources; in politics, it is desirable if it garners votes, campaign contributions, or power.

Most congressmen either don't realize or don't care about the contradictions among agricultural programs; they measure each program separately on a vote-buying scale. Congressmen apparently see no contradiction in simultaneously giving money to farmers to increase and to decrease production. If a policy does not jeopardize congressmen's fundamental interest in agricultural programs—their own re-election—it satisfies them.

Congressional hearings occasionally make it clear that congressmen do not even understand some of the programs that they have created. On March 26, 1987, the Senate Agriculture Committee held a hearing on the use of payment-in-kind certificates, a new "currency" created to help USDA dispose of government-held surplus crops. This program was one of the major innovations authorized by the 1985 farm bill and had been in operation for almost a year at the time of the hearings. Yet the questions asked made it obvious that most senators had little or no idea how the new program operated. Sen. Rudy Boschwitz nonetheless became indignant when a GAO auditor tried to explain the program to him. Afterwards, however, Sen. Leahy, the chairman of the Senate Agriculture Committee, admitted that "I don't think anybody will be able to understand [the new certificate program] enough to cut [its budget]."

Not only do congressmen themselves not understand their policies, but they sometimes conceal evidence of their failures in order to prevent anyone else from understanding. Congress banned the Federal Trade Commission and the Office of Management and Budget from studying marketing orders in 1984, and in 1979 it banned the Federal Trade Commission from investigating abuses by monopolistic milk-marketing cooperatives.

Time for a change

Almost sixty years ago, Glenn W. Birkett, a "dirt farmer" writing in the *Nation*, complained that federal agricultural policy resembled "Penelope, knitting by day and unravelling by night." Neither thirty sessions of Congress nor ten presidents have been able to construct a rational, consistent agricultural policy. Farm policy has always pointlessly disrupted markets, needlessly picked taxpayers' pockets, and perennially demonstrated the limits of government. Sixty years of federal agricultural policy have disrupted

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

our economy, crippled a major industry, and squandered hundreds of billions of dollars.

For over half a century the federal government has been playing King Canute, trying to hold back the waves of economic change. Yet the tide keeps rolling in. Politicians have justified spending billions of dollars on agriculture each year in order to save the family farmer. But in almost every year since the 1930s, the farm-to-city exodus has continued; America's farm population has decreased from 30 million to less than 5 million. If the government had succeeded in "freezing" agriculture in its 1933 state, America would be far poorer and farmers would actually be as indigent as the farm lobbies claim that they are. The only thing worse than the failure of agricultural policy would have been its success.

Agricultural productivity has always increased faster than the wisdom of politicians. The dismal history of agricultural policy has been caused by politicians who have misunderstood economic evolution: they wrongly assumed that any fall in market prices was evil and therefore demanded strong corrective action from the federal government.

As Hungarian economist Janos Kornai has observed, "The greater the bureaucratic intervention, the more each intervention weakens the effects of the other." The government eventually catches the economy in a crossfire of interventions; an endless shoving match between bureaucracies and congressional subcommittees ensues. Government begins by aiming to fight reality, and ends up fighting itself—entangled in its own rescue nets, tripping over its own fire hoses.

In the future, farm policy should be based on the "forgotten farmer"—the farmer who asks only that no more political tidal waves sweep away his markets, who does not feel entitled to other people's paychecks without their consent, who wants to be permitted to sell his crop at the price that he and his customers agree on, who is proud of his independence, and who can stand on his own two feet and compete with any other farmer in the world. Such a farmer embodies the agrarian ideals that have long influenced public policy. If we respect him, we must respect his markets, and stop driving up his cost of production and restricting his freedom in a series of quixotic efforts to raise farm prices permanently. Polls by farm magazines continue to show a large percentage—sometimes even a majority—of farmers calling for government to end all intervention in agriculture. These are generally America's best farmers; if we want a strong agricultural sector in the future, we must listen to them.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

Beyond the savings-and-loan crisis

DAVID O. BEIM

IT IS TIME someone said it out loud: the thrift industry can no longer be justified as an entity separate from banking.

It has been in crisis for nearly a decade. While there are certainly some healthy thrift institutions, there are so many weak and dying ones that they can no longer be sustained by any existing mechanism. The industry's entire net operating income—pre-tax earnings *before* loan losses—was probably no more than $1.5 billion in 1988. A significant further rise in short-term interest rates would more than erase that income. The industry's entire equity capital is stated at $28 billion, but much of this figure represents useless assets such as good will. Overall, the industry's interest-bearing liabilities exceed its interest-earning assets by $78 billion.

The ultimate cost of thrift failure—whether it turns out to be $90 billion, $110 billion, or more—is monstrously high. I am not concerned here with the allocation of this cost, except to note that the thrift industry itself lacks the resources or earning power to pick up very much of it. Instead I would like to explain what is fundamentally wrong.

The principal culprit is usually held to be weak regulation. Thrift regulators have undeniably been overindulgent and understaffed. They have maintained too close and solicitous a relationship to their industry. If the problem were merely poor regulation, it could readi-

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

ly be fixed. Unfortunately, though, the problem is far more deeply rooted: *the business definition of a thrift no longer works.* Nonetheless, the Federal Savings and Loan Insurance Corporation (FSLIC) continues to back the thrift industry through federal deposit insurance.

The historic role of thrifts

Thrifts include savings and loan associations (S&Ls) and savings banks. There are presently about 3000 S&Ls and about 400 savings banks in the country, with total assets of about $1.2 trillion—approximately one-third those of commercial banks.

Historically, virtually all thrifts were mutual organizations—privately held companies organized for the mutual benefit of their members. S&Ls originated in Great Britain and spread to the United States in the nineteenth century. Here they have played a historic role, for they were once the only sources of long-term capital for home building. The availability of home-mortgage financing let millions of Americans build and own homes, helping to make America a nation of homeowners.

Savings banks, the other wing of the thrift industry, were organized to encourage new immigrants to save part of their wages to gain financial security. They are concentrated in the Northeast, where most immigrants arrived. In contrast to commercial banks, which concentrated on "demand deposits" and provided short-term liquidity, thrifts took longer-term savings deposits and provided longer-term loans—primarily home mortgages—to individuals.

From 1933 until recently, banks were somewhat sheltered from financial markets, but thrifts were even more sheltered. Few competing lenders wanted to make home-mortgage loans, and individuals who wanted to earn interest on savings had few alternatives to using thrifts other than purchasing bonds through brokers, a process that doubtless frightened most of them. Savers naturally turned to thrifts, which were seen as stable and reliable institutions. Long-term savings funded comparatively stable long-term investments.

Unfortunately, the funding of thrifts was never as long-term as it appeared to be. The first thrifts were funded entirely by members' equity; that is, members were obliged to leave their savings with the association semipermanently. Had this arrangement continued, the present crisis might have been avoided. But most people who put their money in thrifts wanted the right to withdraw it at will. Thus the funding of thrifts gradually changed from equity to savings deposits. These deposits are stable only until the world changes; then they can become surprisingly short-term.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

In the 1930s, for instance, savers withdrew their funds in great quantities, causing nearly two thousand thrifts to fail. As a result, the Federal Home Loan Bank (FHLB) system was established to provide liquidity to the thrifts as needed. The Federal National Mortgage Association (FNMA) was also formed as a private company with federal sponsorship to create a secondary market in mortgages, so that the assets of thrifts would be more liquid. In the 1960s, FNMA began to experiment with a new system to provide even more liquidity. It purchased mortgages and combined them into large pools. Pass-through interests in the pools were then sold to true long-term lenders, such as life-insurance companies and pension funds. The era of mortgage-backed securities had begun.

These developments were perfectly appropriate. Thrifts are not the best permanent holders of long-term mortgages, because their funding can be withdrawn at will. But the more suitable lenders were not major players in the home-mortgage business, because of the "retail" nature of mortgages. The great contribution of mortgage-backed securities was to create a conduit from the mortgage originators, primarily thrifts, to the ultimate long-term lenders. This development was a great relief to the thrifts. It let them rely more comfortably on short-term deposits—a giant step toward making them more liquid, like banks.

During the 1970s and 1980s the market for mortgage-backed securities grew beyond anyone's expectations. Aggressive and imaginative investment bankers pooled and repackaged mortgages of all descriptions, creating layers of interrelated securities and residual interests in mortgage pools. The market became so efficient, and mortgage securities became such attractive alternatives to corporate bonds, that bond-market movements now establish the value of mortgages.

In short, thrift assets have come to be market commodities, not private loans. Events far removed from real estate can cause bond prices to fluctuate, and these fluctuations are now quickly reflected in the value of thrifts' assets.

While thrift assets were changing from private loans to market-driven instruments, the nature of deposits was changing, too. From 1933 until 1980, the interest rate that banks and thrifts could pay on time deposits was fixed by the Federal Reserve. Thrifts, in fact, were favored by this system, which permitted them to pay 1/4 percent more than banks.

When interest rates rushed upward in the late 1970s, however, savers soon discovered that market-based instruments provided much

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

higher yields than regulated deposits. The most attractive alternative to regulated deposits was the money-market funds. In the ten years after 1977, money-market funds grew from $4 billion to $255 billion, largely at the expense of banks and thrifts. Thrifts in particular faced a new liquidity crisis.

Congress responded by repealing interest-rate ceilings, so that banks and thrifts could bid openly for deposits. This reform was fine for banks, whose assets were largely short-term or floating-rate. The hapless thrifts, however, were loaded with 5 and 6 percent fixed-rate mortgages, whose funding was now to be provided by deposits at the market rate of 7 percent or more. In 1981 the thrift industry as a whole had operating losses of $7.1 billion, and in 1982 it lost $8.8 billion. In 1982 there were 252 thrift failures, and another 102 followed the next year. These losses and failures are the root of the current thrift crisis.

The present crisis was destined to occur sooner or later; it was totally predictable. The funding of long-term, fixed-rate mortgages with short-term deposits has always been very risky. It lasted so long because the United States enjoyed stable interest rates for a hundred years, from Reconstruction to the late 1960s.

Market banking is a creative response to the present instability of interest rates. It enables thrifts to react more quickly and flexibly to changing conditions. But it also squeezes the profit out of their traditional business.

The business definition of a thrift

The prospectus of a typical thrift describes the business with words such as these: "XYZ Savings and Loan Association is in the business of spread lending—earning income from the difference between interest paid on deposits and interest earned on mortgage lending." A bank prospectus, by contrast, speaks of a wide variety of customer services, including transaction accounts, trust and custody arrangements, and consumer and commercial loans. To be sure, banks make their money on spread lending as well, but they do so in the context of a broader service business. If you separate spread lending from customer service, which many thrifts try to do, you will not have a profitable business in an efficient market.

Financial markets today are efficient. That is their great virtue; they provide borrowers with the lowest possible rates and depositors with the highest possible rates. But in doing so they limit the attractiveness of spread lending, narrowly defined.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

In a certain sense, the thrift business has become too easy, and thereby profitless. A new thrift can be opened almost immediately, since a charter is easily obtained. No real customers are needed: federally insured deposits can be sold in $100,000 pieces through brokers, with the deposits being invested in publicly traded mortgage-backed securitites.

Such a business, which resembles many thrifts in operation today, adds no value to the economy and so cannot be profitable in the long run. If it is profitable in the short run, it is only because of the speculative risk being run.

Lending institutions can take two different kinds of risk: credit risk and interest-rate risk. Credit risk is incurred when institutions lend money to people who may not pay it back. Interest-rate risk, on the other hand, is incurred when deposits have a shorter repricing maturity than assets: if an institution accepts a six-month deposit at 8 percent and buys a ten-year bond at 10 percent, it makes money only until interest-rate increases force it to replace its short-term deposit at a loss.

Traditional thrifts take little or no credit risk, since mortgages are high-quality credit. But they take a great deal of interest-rate risk. In an age of efficient markets, this strategy is virtually certain to lead to losses at some point in each economic cycle. That point is the period—like the one we are in now—when the Federal Reserve tightens the money supply and short-term rates rise.

Banks generally follow the reverse strategy: they take little interest-rate risk but lots of credit risk. Their business too has become less profitable under market banking, for they have had to take more credit risk than ever before. But at least their strategy, if carefully implemented, has a chance of succeeding—especially if the credit risk is local and nonmarket.

Concentrating on credit risk also offers the strategic advantage of diversification, which can be the key to survival: even if one ship sinks, others may remain afloat. Interest-rate risk, however, cannot be diversified, since rate changes affect all long-dated assets simultaneously. Traditional thrifts are therefore playing Russian roulette.

The same logic applies to governmental deposit insurance. If one bank fails on bad credits, others may remain perfectly healthy. But when one thrift loses money on interest-rate risk, other thrifts tend to lose money at exactly the same time. Such simultaneous losses put the government in an impossible position.

If thrifts and their insurer are to survive, they must be permitted to take less interest-rate risk and more local credit risk. This is the

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

direction in which most thoughtful thrifts have been moving, and the laws have been liberalized to allow the transition. These thrifts are taking another giant step toward becoming banks.

Unfortunately, markets are tough. If you are going to take credit risk, you must have a staff of lending officers with credit experience who know their borrowers. Only the most sophisticated thrifts have now built such staffs. Too many thrifts jumped into the credit-risk game without sufficient preparation when it opened to them. From 1982 to 1984, brokers peddled to thrifts vast numbers of high-return loans for the acquisition, development, and construction of real estate ("ADC loans"). Again, this business was too easy to be profitable, and a large proportion of the ADC loans have now defaulted. The problem is not just that the Southwest region—to which most of the loans went—is troubled, but that the thrifts were trying to do something that is generally impossible: make easy money through market banking. There is no substitute for building a real business with real customers and real services.

Mortgage origination

Market banking has not only squeezed the profit out of spread lending. It has also made mortgage origination a big-company business, national in scale.

The triumph of mortgage-backed securities has separated the business of mortgage origination from the business of lending. Anyone, not just thrifts, can now originate mortgages without having to hold them for more than a few months; capital can be furnished by outside lenders. Although this development has allowed thrifts to become more liquid, it has also invited a vast number of new players into the business of mortgage origination.

Thrifts used to account for the great majority of mortgage originations in the United States. Today they account for less than half, and their share is generally falling. While some of the giant thrifts have made mortgage origination their primary business and have increased their market share, most ordinary thrifts find it very hard to compete with them and the banks, insurance companies, finance companies, independent mortgage bankers, and financial conglomerates that have entered the mortgage-origination business over the past five years. (See Table.)

Citicorp, the nation's largest banking company, has become the leading originator of home mortgages simply by throwing its considerable resources into the origination business. It is true that Citicorp and other banks may not hold these mortgages for more than a brief

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

Table. Leading one-to-four family mortgage-loan originators in 1987[a]

Company	*Volume (In billions of dollars)*	*Market Share (In percentage)*
Citicorp	14.8	3.3
H.F. Ahmanson & Co.	10.8	2.4
Great Western Financial Corp.	8.2	1.8
Fleet/Norstar Financial Group	7.5	1.7
GlenFed Inc.	5.3	1.2
CalFed Inc.	4.6	1.0
CityFed Financial Corp.	4.6	1.0
Dime Savings Bank of New York	4.4	1.0
Sears, Roebuck and Co.	4.3	1.0
Home Owners FSLA	3.6	0.8
Countrywide Credit Industries, Inc.	3.5	0.8
Chase Manhattan Corp.	3.5	0.8
Imperial Corp. of America	3.3	0.7
Goldome FSB	3.2	0.7
Shawmut National Corp.	3.0	0.7
Weyerhaeuser Co.	2.9	0.6
Primerica Corp.	2.8	0.6
Financial Corp. of America	2.8	0.6
Ford Motor Co./First Nationwide Bank	2.7	0.6
Home Federal SLA	2.7	0.6
General Motors/GMAC Mortgage Corp.	2.7	0.6
Meritor Financial Group	2.6	0.6
Commonwealth Mortgage Corp.	2.6	0.6
TransCapital Financial Corp./Transohio SB	2.4	0.5
Bank of Boston Corp.	2.4	0.5

[a] *Source*: SMR Research Corporation.

period; but commercial banks—especially those that are strapped for capital—may in fact start holding more mortgages in their portfolios, because of new international reserve requirements that let banks lend twice as much money in mortgages as they could in general loans.

Mortgage lending has long been the distinctive service offered by thrifts. As banks become increasingly involved in issuing mortgages, another important distinction between banks and thrifts is vanishing. Yet the special role of thrifts in mortgage lending has been the basis of their political support. Edwin J. Gray, former chairman of the FHLB Board, put it very well in 1983:

> The Federal Home Loan Bank System and its deposit insurance ally, the FSLIC, continue to exist—and can only continue to exist—in order to support the mortgage-finance function. There is no other reason for their existence. . . .
>
> There are those in this industry who believe their institutions ought to be allowed to engage in virtually any bank-like activity they wish. . . . [But] to the extent that Congress were ever to come to believe . . . that institutions the Home Loan Banks assist no longer strongly emphasized home-

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

ownership opportunities, then the system would no longer be able to count on Congress for its continued support.

The system itself would be in jeopardy and the day of its demise would accelerate. . . . [Y]ou simply cannot have it both ways.

The law therefore requires that 60 percent of thrift assets be "qualified thrift assets"—primarily housing-related paper and government securities. Given these requirements, and the foolishness of taking long-term interest-rate risk, what strategy can thrifts adopt?

Possible solutions

Many thrifts have turned to the adjustable-rate mortgage (ARM) for salvation. ARMs were virtually unknown in 1981, but by 1984 two-thirds of all new mortgages had adjustable rates. By mid-1986 this figure had fallen to 20 percent, but by the end of 1987 it had risen again to 60 percent. Some thrifts now refuse to issue fixed-rate mortgages.

ARMs are certainly a valuable product in the home-mortgage market, but they are no panacea for the thrifts. Although they reduce interest-rate risk, they by no means eliminate it; the indices on which they are based are imperfect, and their rate adjustment is subject to annual and lifetime caps. In addition, ARMs involve a good deal more credit risk than fixed-rate mortgages. If monthly payments suddenly increase, many borrowers are likely to default; if monthly payments are held constant, the balance of the loan can grow, possibly above the home's value as collateral.

But the fundamental issue is the market-banking problem. If a perfect ARM—carrying no interest-rate risk and no credit risk—were invented, it would also be perfectly profitless to hold. Its value would be bid up until its return approximated incremental deposit rates. Real ARMs yield profit because risk—mainly interest-rate risk—is still involved. They are less risky than fixed-rate mortgages, but they also yield lower returns than fixed-rate mortgages.

If ARMs are not the solution, what is? Politicians, particularly those who want to discredit the Reagan administration's emphasis on free markets, often blame the current mess on deregulation; this line appeals to many thrift executives who liked the good old days, and even to a few Wall Street analysts. If deregulation is the problem, then the solution must be reregulation.

That, however, would be an expensive mistake. In an era of volatile interest rates, the traditional game is bound to fail—and for almost everyone at the same time. Not deregulation but the volatility of interest rates is what has undermined the thrift business, or

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

rather exposed a weakness that has always been present. Deregulation was an intelligent response to economic instability.

Reregulation would presumably involve reimposition of interest-rate ceilings and the further restriction of thrifts' ability to make commercial loans and other nonmortgage investments. Neither idea makes sense. Interest-rate ceilings suffer from the flaw common to all price controls: sooner or later, they are broken by market movements. Customers will desert institutions that do not offer competitive interest rates. Similarly, regulations that keep thrifts from taking credit risk force them to take more interest-rate risk.

But if thrifts take credit risk, how can we prevent the absurd trade in brokered ADC loans, the fraud, and the inside dealing that have compounded the original thrift crisis of 1980? The answer is twofold: close all insolvent thrifts, and put healthy thrifts under the same supervisory system as commercial banks.

The problem of insolvent thrifts

The most immediate issue in the thrift crisis is the existence of approximately 350 insolvent thrifts, which have been permitted to remain open and to keep growing like a cancer. Virtually all independent observers agree that the cheapest and wisest resolution of the problem is to liquidate the insolvent thrifts. Despite this consensus, few have actually been closed. Some have been "rescued"—recapitalized at great cost to the government—and the rest have simply continued their operations.

Leaving insolvent thrifts open is a costly way to delay the inevitable. If liabilities substantially exceed interest-earning assets, old operating losses are certain to be compounded by new ones. Insolvent thrifts, moreover, must bid aggressively for market deposits, artificially driving up deposit rates for all thrifts and banks.

Finally, when there is nothing left to lose, the insolvent and nearly insolvent thrifts take huge gambles on credit risk in the hope of making a comeback. Virtually all of these gambles have now failed, leaving the FSLIC with a problem far larger than it had at the start of the crisis. Jonathan Gray reports one extreme example of this phenomenon in his booklet *Financial Deregulation and the Savings and Loan Crisis*:

> American Diversified Savings, a California S&L, . . . had been a mere $11 million in size at June 30, 1983, and had grown to $800 million in the next 18 months. At liquidation its $1.3 billion in assets were worth less than 40 cents on the dollar or $509 million, with a total cost to FSLIC of $800 million.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

This anecdote is tantamount to a news report that a drunken motorist has wiped out the entire city of Pittsburgh.

A company with $11 million in assets lost $800 million. With perhaps $500,000 in equity, it destroyed $800 million of insured deposits, a kill ratio of 1,600 to 1. In terms of sheer destructive power, only the black hole in astrophysics would appear to be in the same league.

The majority of insolvent thrifts grew with brokered deposits and brokered ADC loans, not real customers. Consequently, most of them will not be purchased by healthy companies; the size of their problems dwarfs their intrinsic value. The only reason that they remain open is that liquidation requires cash. Depositors do not want promissory notes; they want their money back. But the FSLIC has no cash. Indeed, it is deeply insolvent itself.

To explain the cost and futility of the FSLIC's mad scramble to "resolve" problem cases in 1988 requires a brief digression. The first step in dealing with a failed bank or thrift is to revalue all assets and all liabilities at current market prices. The excess of liabilities over assets is the base cost of the bailout. But the initial cash outlay required to liquidate the institution exceeds the base cost, since it must cover all of the institution's liabilities. The difference between the initial cash outlay and the base cost is recovered by selling the institution's assets.

Rescuing and resuscitating a failed bank or thrift makes sense only if the cost of doing so is less than the base cost of liquidating it. This will be the case only if an outside bidder perceives so much franchise value that it will pay a premium of one sort or another to get hold of it. For example, when the Federal Deposit Insurance Corporation (FDIC) sold the First Republic Bank system to NCNB Corporation in July 1987, the cost to the FDIC was estimated at between $350 million and $580 million below base cost.

Thrifts, however, are such narrowly defined businesses that they typically lack strong franchise value. Indeed, potential buyers have been frightened away by negative trends in the industry and the FSLIC's own insolvency. To "move" these properties, the FSLIC in effect offered large premiums to potential buyers. The most significant premium offered was tax benefits. i.e., major reductions in the buyers' income taxes. (Tax benefits in thrift bailouts are complex, poorly understood by Congress and the public, and much larger than is commonly believed.)

One sure sign of trouble was the near-total absence of real financial institutions—i.e., those companies that might be expected to value the franchises most highly—among the buyers. Instead, the

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

bidders were generally individuals and corporations looking for high and guaranteed rates of return, but with little interest in the banking business itself. Investors like these can also use their money for high-yield leveraged buyouts, so they are generally seeking a 30 to 40 percent compound rate of return. Since a substantial amount of the return that they get from buying failed thrifts comes from FSLIC payments, something akin to government debt is being sold at an extremely high rate of interest.

Indeed, when tax benefits are taken into account, the buyers of failed thrifts may have been given returns of 40 to 60 percent. Such thrift bailouts probably cost the government two or three times the base cost. They are neither efficient nor economical.

It would be far better to end the charade and use cash to close the insolvent thrifts before they devour even more taxpayer dollars. The greatest merit of the Bush administration's plan is that it will provide cash to do so.

The future of healthy thrifts

Healthy thrifts should be encouraged to become banks. Indeed, the many strong thrifts have long recognized that their business definition is too narrow, and they have worked hard to provide new services. Regulators and legislators have accommodated them with ever-broader authorization to move in this direction. Many S&Ls, in fact, have already adopted the name "bank," and have taken on the trappings of full-service commercial banks.

The Administration's program takes one important step in this direction by putting the FSLIC under FDIC management. The program's greatest weakness, however, is that it nonetheless perpetuates the distinction between banks and thrifts; indeed, it relies upon this distinction to fund interest payments on new bonds to be issued by the Resolution Funding Corporation. In doing so, the Administration's program works against the public interest by deliberately hindering a natural evolution that offers existing S&Ls their best chance for survival. Since the traditional thrift business is in an advanced state of decline, it is perverse for the government to force companies to stay in this business when market forces would pull the best of them out of it.

Yet that is what is happening. The notion that S&Ls are paying for their own bailout and banks are merely increasing payments to "their" FDIC is a convenient political fiction, but it has a real economic cost. By continuing to insist on a separate thrift industry, the government continues to underwrite a losing cause. As interest rates

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

rise further, more thrifts will fail and the price to be paid by the public will continue to climb.

Why should the government attempt to maintain a separate thrift industry? What possible public interest is served by preventing healthy S&Ls from merging with banks and/or joining the FDIC? Nearly a third of the S&Ls could meet the FDIC's capital requirements today.

The fact is that the thrift business can no longer be justified as an industry separate from banking. Just as the worst S&Ls must be closed, so the best ones must enter the banking system and be governed by bank regulations.

Perhaps a thousand S&Ls will be left in the middle, not bad enough to be liquidated and not good enough to meet FDIC standards. The main job of the FHLB system in the coming decade should be to manage this middle group, working with each S&L either to liquidate it or to help it become a bank.

Over time, the thrift crisis can be resolved. Resolution will be expensive, but the expense only grows the longer it is delayed. Thrifts helped house America, but times have changed. Rather than cling to the failed patterns of the past, we must move ahead. The destiny of healthy thrifts is to become banks; the destiny of insolvent thrifts is to be liquidated.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

The mismanagement of air transport: a supply-side analysis

ROBERT W. HAHN & RANDALL S. KROSZNER

THE LAST decade has witnessed dramatic changes in the regulation of the U.S. transportation sector. Transport firms enjoy greater freedom in setting prices, entering and leaving markets, and offering new services. Partial deregulation of the airline, bus, railroad, and trucking industries has increased efficiency and saved consumers money. Annual savings from airline deregulation alone may exceed $15 billion.

Deregulation for the airline industry has undoubtedly had the greatest direct impact on the public. Since 1976, average real airline fares have declined by 15 percent, the number of air travellers has increased more than 90 percent, and the number of flights has increased by one-third. In addition, more than 100,000 airline jobs have been created; commercial airline employment has risen by more than one-third. U.S. airlines have continued to show strong productivity growth, while that of foreign airlines declined in the early 1980s.

Yet despite its substantial benefits, airline deregulation has drawn frequent criticism from the public and the press. Bills in Congress have called for reregulation and retrenchment, harkening back to the "good old days" of the Civil Aeronautics Board (CAB)

We would like to thank William Kutzke for helpful comments.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

when things supposedly worked smoothly. But these reactions generally miss the mark. They result from a fundamental misperception about the effects and scope of deregulation.

The Airline Deregulation Act of 1978 addressed only the direct regulation of commercial air carriers. What most critics of deregulation overlook is that the government's role in managing airspace and providing airport services—the "supply side" of the air-transport market, in which airlines are the customers—was left unchanged. The air-traffic control system continues to be operated by the Federal Aviation Administration (FAA). Major airports are still publicly operated and must comply with federal regulations in order to receive grants for capital improvements. In short, the Airline Deregulation Act greatly increased the demand for airport and air-traffic control services, while leaving the supply of these services highly regulated.

The interaction of a dynamic demand side with a highly regulated supply side led to predictable problems—most notably, increased congestion. These problems have received increasing attention. In 1988 then-Secretary of Transportation James Burnley asked for suggestions on restructuring the FAA. President Reagan's Aviation Safety Commission advocated making the FAA an independent agency, and his Task Force on Privatization suggested that many aspects of the air-traffic control system be removed from government control. Members of Congress have introduced numerous bills related to service, safety, and congestion. Yet so far there has been no attempt to develop a coherent policy for reforming the supply of airspace services.

The advent of partial deregulation

For four decades, the CAB strictly controlled carriers' access to interstate routes, as well as the fares on these routes. It prevented price competition by setting and enforcing standard fares and by protecting the existing interstate carriers, or "trunks," against competition. From 1938 to 1978 the Board did not permit a single new entrant to offer service on a major route. The CAB was apparently trying to stabilize the industry, awarding lucrative routes to carriers in times of financial trouble and requiring some carriers to serve less profitable routes as a *quid pro quo* for access to choice routes.

Spurred by Senate Judiciary Committee hearings in 1975, the Board began to make reforms. The CAB introduced price competition by approving "Super Savers," discount fares with advance-purchase and minimum-stay requirements. The Board also began to relax its grip on route allocation, giving airlines greater discretion in

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

route choice and in introducing competition on what had been monopoly routes.

The Airline Deregulation Act mandated the end of CAB authority over route allocation by December 1981 and over fare setting by January 1983. The Board actually introduced price competition and freedom of entry much more rapidly, and by early 1980 CAB regulation was no longer an important constraint on airline competition. After the CAB was abolished in 1984, the Department of Transportation (DOT) assumed responsibility for overseeing the airline industry and was given antitrust authority. The Airline Deregulation Act, however, did not diminish the FAA's role in ensuring aviation safety, operating the air-traffic control system, and managing the airspace.

The flexibility that deregulation gave airlines in choosing routes and setting fares has occasioned major changes in airline operations, most notably the growth of "hub and spoke" networks. At the "spoke" airports, passengers with different ultimate destinations are pooled onto the same aircraft to the "hub." At the hub, the spoke passengers join others traveling to the same destination for the final leg of their journeys. Carefully designed networks have resulted in more efficient aircraft usage. For their part, travelers enjoy greater frequency of flights at both hub and spoke airports. In addition, hub-and-spoke operations cater to consumer preferences by permitting more passengers to use a single airline for their entire journeys. In 1977, for example, 68 percent of all connecting passengers changed airlines, whereas today only 12 percent do so.

While the extensive development of hub-and-spoke networks was unforeseen at the time of deregulation, there was concern that competition would jeopardize safety. The sharp reduction in the number of air-traffic controllers following the strike in 1981 and the very rapid growth in the demand for air travel in the 1980s have led to similar worries. But although flight hours have increased by half since 1977, the number of accidents involving commercial passenger and cargo operations is less than it was before deregulation. Accident rates have continued to decline since deregulation; deaths per 100,000 flight hours have been halved. This improvement in safety has occurred across all segments of the industry—from small regional and commuter carriers to the major trunk airlines.

In addition, lower fares and more frequent service have led people to substitute the safest form of intercity travel—flight—for other modes of transportation. Between 1980 and 1984, for example, deaths per passenger-mile were one hundred times greater for

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

car travel than for air travel. Richard McKenzie and John Warner of Clemson University have estimated that deregulation has saved more than eight hundred lives each year because people chose to travel by plane rather than by car.

The increased demand for air travel has caused congestion and delays. Starting in September 1987, DOT has collected detailed delay data on a flight-by-flight basis, covering the fourteen top airlines, and found that about one-quarter of all flights are delayed fifteen minutes or more. Most delays occur at crowded airports during peak seasons and times of day. In 1987, for example, 85 percent of the recorded delays (fifteen minutes or more) happened at only twenty-two airports. The FAA reports that in 1987 nearly one-fourth of flight delays were volume-related. Rapid traffic growth, which is predicted to continue, will place increasing stress on the system. If the supply side retains its current structure, greater congestion and more delays will result.

Airspace mismanagement under the FAA

Before examining reform proposals, it is important to understand how the air-transport system operates. Primary authority for managing the air-traffic control system rests with the FAA, now part of the Department of Transportation. The FAA manages a system of "highways in the sky," the routes that aircraft are permitted to use when traveling. The FAA not only specifies the routes, but also determines the conditions under which aircraft may use them. In addition to managing the flow of air traffic, the FAA is faced with the formidable tasks of ensuring the safety of the entire system and allocating grants for airport development.

The air-transport system depends upon the FAA for its daily operation. Few private businesses have such an intimate relationship with a government agency. More than 15,000 air-traffic controllers in over four hundred FAA towers, en-route control centers, and other facilities authorize takeoffs and landings and track flights. Another 32,000 FAA employees support the controllers by monitoring safety, making rules, and managing FAA operations.

Airline deregulation has made management of the airspace much more difficult. When the CAB held sway, change in the airline industry was slow and largely predictable, making it relatively easy for the FAA to provide adequate service. But in the dynamic deregulated environment, the rigid personnel and procurement rules imposed on most federal agencies create major problems for the FAA. Pay scales, for example, prevent the FAA from paying controllers

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

and technicians in Chicago more than their counterparts in Peoria. Salary caps and inflexible promotion rules also hamper the FAA's ability to compete with the private sector for skilled personnel. Complex procurement regulations cause long delays and raise costs; these rules inconvenience the FAA in an age of rapid technological changes and high demand for state-of-the-art equipment. As a result, FAA facilities are largely outdated. The FAA, for example, is the world's largest user of vacuum tubes.

The FAA is also hindered by lack of knowledge about the needs of airspace users. The FAA rarely prices its services directly, and even when it does, the prices bear little relation to cost. For example, air-traffic control services and weather reports are free. Most of the funding for the air-traffic control system as well as for airport capital improvements comes from airline ticket taxes. Because its services are generally unpriced, the FAA is hard pressed to gauge their value to airlines and passengers. Since users do not bear the costs of additional service, they do not hesitate to demand more.

Because the present financing system severs the connection between supply and demand, there is no way to tell what additional capacity, if any, makes economic sense. It may be that smoothing demand peaks is more economical than building additional runways. Only user fees, which Congress has not yet been willing to impose, can solve this problem.

The increased demand for air travel following deregulation has brought these supply-side management issues to center stage. Capital planning has been neglected, as three-fourths of the FAA's $4-billion annual budget is spent on current operations. The FAA has responded to the perceived capacity shortage by encouraging the construction of new airports and by modernizing its computer system. Under pressure from Congress and the users of the system, the FAA developed an ambitious fifteen-year plan for capital improvements, which began in 1981. The National Airspace System Plan calls for new communications, radar, weather-observation, computer, and landing systems. The improvements will permit many FAA facilities and operations to be consolidated, cutting costs and personnel requirements. At an FAA-estimated cost of $16 billion, it would be the largest nonmilitary technology project since the Apollo moon shots.

The National Airspace System Plan, however, is already far behind schedule; dogged by technical problems and restrictive procurement rules, it will be far more expensive than originally thought. The General Accounting Office reports that the cost of the plan will

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

exceed $24 billion and that it will not be completed until the next century. Much of the planned consolidation will require specific congressional action, and opposition from aviation-user groups could delay or eliminate many of the benefits. Cost overruns and budgetary uncertainties make full implementation of the plan doubtful.

In any event, the plan does not address the FAA's fundamental problems: lack of price information, procurement and personnel constraints, and a mandate that does not allow for the provision of efficient service to air travellers. The agency must be restructured, not just re-equipped.

Constraints on airport charges

The congestion problem appears to result mostly from the underpricing of the scarce resources needed for takeoff and landing. While airports do impose landing fees, these fees do not reflect congestion costs. Instead, they are based upon aircraft weight, supposedly reflecting the wear and tear each landing imposes on the runway. A small private plane can land at many of the nation's busiest airports for $6 or less, whereas a commercial jetliner will typically pay between $90 and $200. Except at the New York airports and to a very limited extent in Atlanta, landing fees are not based on time of day or upon airport usage and congestion. Thus aircraft operators have little incentive to consider the costs they impose upon other users through increased delays.

Airport managers confront many obstacles in addressing this problem. All large airports are publicly owned, and the fees they can impose are limited by a number of legal constraints. Federal airport grants are available only to public airports, which are not operated for profit and have various revenue restrictions. Airport fees must be "reasonable" and "nondiscriminatory." The courts have interpreted these stipulations as requiring prices to be linked to physical costs, such as runway deterioration. In addition, statutes specifically prohibit certain types of charges; ever since 1973, for example, Congress has forbidden airports to levy "passenger facility charges"—fees that airlines must pay for each passenger who uses the terminal facilities.

In addition to landing fees, in the late 1960s a number of busy airports began to assign landing and takeoff "slots" as a way of directly rationing runway use. These slots were allocated by committees of airlines under airport and FAA supervision. Following the air-traffic controllers' strike, federal restrictions were imposed on the number of flights at several airports. Gradually these federal

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

limitations were removed at all but four major airports: Chicago O'Hare, Washington National, Kennedy, and LaGuardia. As of April 1986 airlines at the slot-constrained airports have been permitted to buy and sell their slots.

Although this system does give airlines greater flexibility, it now suffers from several problems. First, the FAA can take slots away from a carrier, so the property right to a slot is weak. (The FAA has reallocated slots to new entrants or smaller carriers without compensating the initial owner.) Second, slot ownership gives carriers a right to advertise the scheduled arrival or departure time, but not to purchase a guaranteed departure or arrival time or to be given priority in a queue. Passengers who incur high costs when delayed are not permitted to pay a premium to ensure that their flights arrive on schedule.[1]

Contracts between airports and airlines also restrict the fees that airports can charge. Until recently airports typically relied on long-term lease agreements with airlines and others to secure their bond revenues. In order to obtain these commitments, the airports had to promise not to alter their fees significantly. With the onset of deregulation, however, airports have undergone some important changes. Increased competition among airlines has led airport managers to renegotiate old contracts and to reduce the average term of new contracts, as well as to provide for more frequent contractual adjustments. Airport managers have also been obtaining more control over fees.

In response to this competitive pressure, airlines have more vigorously searched for new markets. Many cities have attempted to woo various airlines by making themselves attractive hub locations; there has been a remarkable growth of hubs in medium-sized cities, including Raleigh-Durham, Charlotte, Minneapolis-St. Paul, Cincinnati, Dayton, and Memphis.

While partial deregulation has helped expand capacity in many airports, ownership has not changed. Virtually no airports are run by private firms. Public airports, after all, pay no taxes, while enjoying access to tax-free financing. Because income from municipal bonds is not taxable, public operators spend 25 percent less than private operators to get financing. In addition, because existing airports frequently price services below marginal cost, private airports

[1] The failure of several new carriers that tried to lure the affluent with caviar and comfort may be partly attributable to what money cannot buy—on-time performance. Passengers who demand amenities are typically those who place a high value on their time. By blocking the provision of reliable on-time performance, the system may result in lower overall service quality.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

would find it hard to attract existing air traffic. And while public authorities can use the power of eminent domain to obtain property, private firms cannot. The strong opposition in many communities to the construction of airports also makes private entry difficult. A number of communities have recently passed ordinances explicitly restricting the number of flights at their airports. Public authorities also find it easier than private companies to address noise and environmental concerns, and fear of future regulations may make private firms reluctant to sink capital into airports. Finally, private airports are ineligible for federal grants.

Increasing safety while maintaining efficiency

Any proposal to reform the air-transport system must promote safety as well as efficiency. Even though safety has improved under deregulation, widespread anxiety remains. The increased travel resulting from deregulation and other factors has put a strain on airspace services, which could (but need not) reduce safety.

In fact, it may be that since the airline industry is so competitive, the government need not regulate its safety. Although such thoughts are often deemed heretical, it is obvious that airlines have very strong market incentives to maintain their excellent safety records.

There are two forms that the FAA could take without decreasing either safety or the efficiency of the airline industry. It could restrict itself to overseeing safety and pass its other functions to private firms, or it could get out of the safety and air-traffic control businesses entirely, leaving both functions to the private sector. (There are many organizations outside of the government, such as Underwriters' Laboratory and Consumer Reports, that can effectively vouch for the safety of firms in different ways.) Regardless of which route is taken, oversight responsibilities should be kept separate from air-traffic control responsibilities, and the air-traffic control system should be privately run.

Whether a single corporation is the most efficient organizational form for managing the airspace is unclear. With adequate technical coordination, multiple corporations could serve different sections of the country and could tailor different services to the needs of specific users.

The idea of multiple systems is not so farfetched as it might sound. In fact, air traffic is controlled by multiple systems now. Different systems communicate routinely in international travel, as well as when a plane travels through different airspace sectors in the U.S.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

The key is to link these systems intelligently and to establish procedures that adequately address safety concerns. Just as is currently done, all planes would have to have their flight plans approved before takeoff. The standards for approval could be worked out by a government agency or a private entity managed by interested parties.

The economic success of the air-traffic control system will depend, in part, on how property rights are defined. As with other systems of private property rights, it is important that airspace rights be *transferable* so that they can be put to the highest-valued uses. Once the groundwork for privatization had been laid, the government could begin to sell the rights to provide air-traffic control services in different parts of the airspace. The partitioning of the airspace presents some interesting challenges. As a first cut, the government could take bids for well-defined traffic regions. The regions would have to be small enough so that many different firms could compete, but sold in such a way that an efficient network could be formed. In order to gather information on how to implement this scheme, it could be tested in a small region.

Critics might argue that economies of scale dictate that only one firm should be ultimately responsible for managing the airspace. This is doubtful. Similar arguments were made about long-distance phone service, but experience suggests that several firms can compete effectively. Different airspace users may prefer special services tailored to their needs. Allowing several firms to compete will stimulate innovation while holding down prices for air-traffic services.

Restructuring airport ownership and management

The way to ensure efficient airport management is similar to the way to ensure efficient airspace management. While the Airline Deregulation Act removed price and entry barriers on domestic airline routes, it did nothing to open up airport ownership. The role of the private sector needs to be expanded. Airports could be sold to private operators. Competition would be most viable in metropolitan areas with more than one airport, such as New York City and Washington, D.C. Elsewhere franchise bidding schemes and other ways to hire private firms to run airports may be more appropriate. Since building a new airport is quite difficult in many metropolitan areas, airports—whether publicly or privately owned—may exercise some market power over airlines and passengers. Careful crafting of airport charters and contractual obligations is therefore important for efficient airport operation.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

While such proposals radically depart from the status quo, they are receiving serious attention both here and abroad. In 1972 Great Britain began to turn to the private sector to manage airspace. More recently, it sold its major London airports to the private sector. A private company now competes with a governmental body for contracts to train air-traffic controllers. In America the FAA is in the early stages of a pilot program that will permit the control towers of seventeen small airports to be operated privately. A private firm has expressed interest in purchasing and managing the FAA-run control towers at small airports throughout the country.

Even without reforming airport ownership, efficiency can be increased in several ways. The simplest way is for airports to charge prices that reflect actual costs, including social costs; peak-hour flights, for example, should face higher landing fees than off-peak flights.[2] Another way to promote efficiency is to broaden the menu of available airport services and to charge users for them. Airlines should be able to buy priority status for both takeoffs and landings. All airport services, in fact, could be paid for by a variety of user fees. There is no reason why the general taxpayer should foot the bill, except when specific services are used by the government, such as for military operations.

Airports should also be permitted to assess passenger facility charges. The enabling legislation could require that the resulting revenues be earmarked for airport use only, in order to prevent the diversion of funds to local projects unrelated to aviation. The use of passenger facility charges instead of grants to fund capital improvements in airports would help wean airports away from inefficient dependence on federal assistance.

Political opposition

Proposals to increase the role of the private sector, unfortunately, are likely to fall on deaf ears. Even if there were widespread agreement on their desirability—and there is not—strong political forces would prevent their wholesale adoption.

User groups have strongly influenced the structure of the system through pressures on Congress, the FAA, and local airports. While two-thirds of all commercial passenger traffic is concentrated at the

[2] In 1968 the major New York airports introduced peak and off-peak minimum landing fees. Following this change, peak-period traffic fell by 30 percent and overall "general aviation" (GA) activity—flights by small corporate jets and privately owned propeller airplanes—declined by 19 percent. Traffic shifted to off-peak times and to smaller, less congested airports in the area.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

twenty-five top airports, most of America's more than five thousand airports are used primarily for general aviation. The general-aviation lobby is extremely powerful in Washington, even though one might think that such a dispersed group would have difficulty organizing an effective lobby. There are several reasons for its influence. Congressmen from rural districts rely heavily on general aviation during their campaigning, and many members of Congress are themselves private pilots and plane owners. In addition, business executives, who are the principal contributors to political action committees, rely on corporate jets for much of their travel, and congressmen often hitchhike on these jets to return to their home districts. Finally, the major manufacturers of GA aircraft happen to be concentrated in Kansas and are represented by prominent senators who are actively interested in aviation.

General aviation's influence has translated into heavy subsidies and a funding system that divorces fees from service. An FAA study estimates that GA operators pay less than 10 percent of the costs that they impose on the air-traffic control system. Similarly, large hub airports are thought to generate far more revenue in ticket taxes than they receive in grants. The resulting redistribution of funds toward the smaller commercial and GA airports is part of the Airport Improvement Program initiated in 1982, and had also occurred under earlier funding programs. No airport can receive more than $12.5 million in grants, and the primary commercial airports cannot collectively receive more than half of the disbursements. The Airport Improvement Program also mandates that a certain percentage of all grant money must go to small commercial and GA airports.

In addition to being directly affected by the concerns of user groups, congressmen have learned that support for safety, if handled deftly, can translate into votes. The FAA is the enduring symbol of congressional concern for safety. It is unlikely to be dismantled unless a compelling case is made to the public.

Thus, though efficiency demands that there be a private market in airports and air-traffic control services (provided that entry barriers are sufficiently low), privatization of major facilities is not likely to occur soon. The question then remains how best to meet the needs of the air-transport sector. Our own view is that the role of the federal government should be kept to a minimum. Airlines and municipalities are better positioned to make the relevant decisions. But since municipalities are rarely governed strictly by concerns with profits or economic efficiency, we see no simple way of getting around this problem in the short term.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

Under the current structure, the problem of airport capacity is cast mainly in physical terms, involving runways and computers. Capacity is treated as fixed in the short run. As we have stressed, pricing mechanisms offer one way to improve the use of existing facilities. Even without rational pricing, however, capacity is variable in the short run.

Airlines and aircraft manufacturers are very responsive to new rules. In the 1970s, for instance, many busy airports began to allow only a new generation of quieter aircraft to take off or land during certain times of day. Manufacturers were quick to meet these design standards, and airlines purchased the new planes and now use them where regulations and demand warrant. If new landing procedures favored planes that required relatively little runway space, there would be a similar innovation in aircraft design. More planes could use runways without compromising safety if planes with special capabilities, such as the DeHavilland Dash-7, were treated differently than other planes.

In the long term, we must try to lower the barriers to private airport ownership. This means removing the tax advantages and property-rights advantages that municipalities now enjoy. In short, the FAA's role should be restricted to the oversight of safety activities, and the private sector should take over the ownership and management of airspace and airports.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

Thin Thinking About Heavy Drinking

WILLIAM MADSEN

THE CONFLICT between the moral and medical approaches to alcoholism is being revived. The newest champion of the moral cause is Herbert Fingarette, who has argued in *The Public Interest* (Spring 1988) that "the idea that alcoholism is a disease" is a "myth" that is being pawned off on a gullible public by a coalition of avaricious doctors, cynical providers of ineffective "treatment," public officials eager to shirk their duties and millions of alcoholics who wish to avoid taking personal responsibility for their actions. Those who perpetuate the myth, Fingarette suggests, do so for the most venal reasons: physicians "defend an enormous growth in institutional power and fee-for-service income"; researchers seek government funds; legislators, judges, and bureaucrats lighten their work loads by compelling heavy drinkers to enter costly but ineffective treatment programs, as a show of addressing the social problems posed by alcohol abuse.

The perpetuation of the myth that alcoholism is a disease, Fingarette further charges, has required that the public be "kept unaware of a mass of scientific evidence accumulated over the past couple of decades, evidence familiar to researchers in the field, which radically challenges each major belief generally associated in the public mind with the phrase, 'alcoholism is a disease.'"

But Fingarette's attempt to share the scientific truth with the heretofore deluded public is badly misconceived, because he himself—a layman in the field, lacking all scientific credentials—has completely misunderstood the medical issues and badly misrepresented the pertinent scientific literature. In what follows I will point out only a few of the most glaring defects in his arguments.

FINGARETTE'S claim that alcoholism is not a disease is supposedly based not on "isolated experiments or off-beat theories," but on "massive, accumulated, mainstream scientific work by leading authorities, published in recognized journals." But the hard scientific evidence from biology and medicine offered by Fingarette is tiny and insignificant. His portrayal of the findings of psychology and sociology as hard scientific fact is unpersuasive, but constitutes practically all of the evidence for his erroneous arguments.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

Thus Fingarette fails to recognize the obvious inadequacy of much experimentation done on alcoholics under highly artificial laboratory conditions. These experiments are based on simplistic models of "rat research" in laboratories in which all variables can supposedly be controlled. But as animal researchers realized long ago, laboratory research must be supplemented by observations of the behavior of animals in their normal environment. Fingarette accepts the results of these lab experiments as proof that alcoholics do not experience uncontrollable "craving" for a drink; he deduces that alcoholics can willfully control their drinking behavior, which in turn disproves the disease concept of alcoholism. One of these studies showed that when alcoholics are "promised money if they drink only moderately, they drink moderately enough to earn the money." Another demonstrated that if the alcoholic had to do something boring—like pushing a lever—to get a drink, the alcoholic would "avoid the boring activity and forgo the additional drinking." But it is ludicrous to think that data from such contrived experiments will bear any resemblance to the behavior of alcoholics in a normal environment. Outside a laboratory, alcoholics have been known to lie, steal, break into liquor stores, and even threaten to kill to obtain alcohol when they really craved it.

By fiat Fingarette then rejects the claim that alcoholism is a disease, claiming instead that "heavy drinkers" drink for reasons "that are not results of alcohol's chemical effect." He further tries to justify his dismissal of alcoholism as a disease by asserting that since drinking habits range from abstinence to chronic abuse, it is impossible to establish distinct categories of drinking. By this reasoning we should throw out the concept of "puberty" in growth studies, because the onset and termination of that condition are hard to mark and vary widely from individual to individual. Or perhaps because there is debate today over the demarcation between life, brain death, and biological death, the concept of death is invalid. Death would be for Fingarette a fabrication foisted on the public by money-mad morticians and by cadavers trying to avoid their responsibilities to the living. Fingarette's refusal to classify alcoholism as a disease rests on his opinion and nothing else.

Fingarette knows little about what constitutes a disease. Since no single cause has been discovered for alcoholism, he believes that it cannot be a disease. But by this standard many medically accepted diseases would be denied their classification, such as diabetes, chronic obstructive pulmonary disease, eczema, psoriasis, Alzheimer's disease, and schizophrenia.

Fingarette also seems to have trouble understanding that diseases are not static, but progress through a course. He is extremely critical of Jellinek's claim that the disease of alcoholism goes through "phases." It is true that Jellinek's claim was not completely supported by later studies. Nevertheless, Fingarette's critique is unpersuasive. In the first place, no individual case of a disease follows a generic model

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

perfectly. Jellinek's research, moreover, was the first to produce a useful description of the disease's course, and subsequent progress has been based on his work.

Some scientific evidence is too strong for Fingarette to ignore, and so he dismisses it as irrelevant. The evidence derives from genetics: Fingarette admits that 18 percent of the sons of alcoholic parents become alcoholics, but sees little significance in this, since this means that 82 percent of them "do *not*." Fingarette would do well to consider the implications of Mendel's classic pea-flower experiments. Seventy-five percent of his cross-bred flowers were red, but this does not mean that genetic factors played no role in causing 25 percent to be white. Fingarette has also ignored the vast and significant literature on genetics and personality. Of particular importance here is the research of neuropsychologist Ralph Tarter at the University of Pittsburgh School of Medicine, which indicates that there are six inherited "temperaments" that seem to predispose individuals to alcoholism.

Fingarette's sampling of the alcoholism literature, then, has been very limited. He ignores most of the significant biological research, such as that on alcoholic abnormalities in the P3 wave and in enzymes. The material he does cite was chosen prejudicially, and he lacks the background to discuss the physical aspects of the disease.

FINGARETTE assumes that the American Medical Association ratified the diagnosis of alcoholism as a physiological disease. Had he bothered to check the facts, he would have found that the AMA pronouncement in fact supports his own stance, rather than establishing the physiological model of alcoholism that he attacks. As Dr. Joseph Beasley pointed out in his book *Wrong Diagnosis, Wrong Treatment*, the AMA's official statement describes alcoholism primarily as a mental condition—the behavioral outcome of both conscious and unconscious psychological forces. In other words, the AMA recognizes alcoholism as a behavioral disorder. Furthermore, a behavioral model, as Dr. Margaret Bean demonstrates, is "often a disguised variant of the moral model." Thus, had he read widely enough in the literature, Fingarette could have claimed that the AMA supported his position. Although Fingarette denies that "punitive moralism" directed at the alcoholic is an appropriate response, he still strongly advocates the moral model. As Dr. Bean states, "The moral model assumes that alcoholism is a result of voluntarily chosen behavior (excessive drinking) which results from either immorality (not knowing or caring that one's behavior is bad) or defective will power (knowing but not behaving well) because of poor self-discipline or impulse control." Dr. Beasley cites Bean's work and other evidence to demonstrate that in fact the biological aspects of the disease of alcoholism have until recently been largely ignored. He concludes that alcoholism is a real disease, but "not a behavioral one." Thus Fingarette, who claims to be attacking an antiquated

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

model of alcoholism as a physiological disease, is actually attacking a rather recent one, which has yet to be ratified by the AMA, but which is fully accepted by physicians today.

Having "disproved" the concept of "craving" (and the related concept of "loss of control") by misinterpreting their meaning and drawing on the results of slipshod research projects, Fingarette attempts to pursue his attack on the disease concept. He lets us in on the ultimate secret held back by proponents of the disease theory: "controlled drinking" (as opposed to total abstinence) is a legitimate therapeutic goal for alcoholics.

Although he claims that "hundreds of . . . reports" confirm this view, he never identifies them. He does refer to the 1962 work of D. L. Davies, who first reported successful "controlled drinking" that was accomplished without his knowledge, endorsement, or training. Fingarette does not mention that this "success" involved only seven individuals out of a sample of ninety-one. Had he really read the report, I do not see how he could think that even these seven had returned to normal drinking. One, for example, regularly relied on Antabuse when he had to be sure that no unpredictable drinking binge would interrupt some important activity. Nor does Fingarette mention that Davies strongly urges abstinence as the only valid therapeutic goal for alcoholics.

FINGARETTE chiefly rests his case on the 1972 report of Linda and Marc Sobell. Two ambitious graduate students with comparatively little experience, the Sobells were eager to arouse the interest of alcoholism researchers. Knowledgeable professionals with vast experience have rejected their study as a fraud. Whether or not this is the case, an evaluation of the evidence casts substantial doubt upon the study's validity.

The original grant that funded the Sobells' research was made to Dr. Halmuth Schaefer, then Chief of Research at Patton State Hospital in California. Schaefer had to leave for New Zealand and turned the grant over to the Sobells. They grossly enlarged Schaefer's original goals for the project and set out to make gamma alcoholics—that is, those who are biologically addicted—into "controlled drinkers."

The experimental subjects in the research were exposed to movies of themselves after drinking and were counseled. Seated at a realistic bar, they were free to order drinks as they pleased, but received a slight electric shock in one finger if they ordered straight liquor or drank too fast. Finally, the subjects "graduated"; each was given an identity card stating that the bearer had been "trained as a SOCIAL DRINKER." These were signed by Marc Sobell as project director. Follow-up studies by the Sobells and by Glen Caddy and his associates announced that the experiment had been a success.

In 1982, however, *Science* published an article based primarily on a review of the Sobell evidence. The study was extremely dif-

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

ficult to do and the investigators are to be congratulated for overcoming obstacles put in their way by the Sobells. Irving M. Maltzman, one of the authors, has stated that these obstacles were "to my knowledge unprecedented within the scientific enterprise." The editor of *Science* also noted the Sobells' totally unprofessional attempts to block publication of the article. Maltzman openly accused the Sobells of fraud. Because of the seriousness of the charge, the Committee on Ethics of the American Psychological Association censured Dr. Maltzman; but the censure was withdrawn after a hearing in which Maltzman presented some of the evidence for his charges. As Maltzman says, "The Ethics Committee found that I had a reasonable basis for my beliefs." Nor was the *Science* report the only significant source to question the veracity of the claims made by the Sobells. Dr. Schaefer, who had originally turned the project funds over to the Sobells, demanded that his name be withdrawn from any association with the project, stating that "the data clearly show that social drinking is not an acceptable alternative."

The *Science* article, which was meticulous in its quest for accuracy, depicts anything but a successful experiment. Only sixteen of the twenty subjects were classified as gamma alcoholics when the project began. Of these, thirteen were hospitalized again within a year for alcohol-related complaints. Two others were using alcohol destructively during the same period. The sixteenth appeared to be drinking socially, but because of further research, Maltzman now believes that this person may not have been a genuine gamma alcoholic. Of the four experimental subjects who were alpha alcoholics (that is, psychologically dependent but not addicted), three reportedly drank to excess, were arrested on drunk-driving charges, and abused drugs other than alcohol. At best, then, one (possible) gamma alcoholic ended up drinking responsibly.

In 1983 a "60 Minutes" report concluded that the Sobell experiment failed tragically. By 1983 five of the experimental subjects had died alcohol-related deaths, all before reaching forty-two years of age. These facts point to grave ethical and legal problems. The Sobells encouraged individuals to ingest a substance that could and did prove lethal to them, while claiming the imprimatur of science. Their action was negligent and culpable in the extreme.

Fingarette blithely discounts the deaths following the Sobell experiment. In his book (*Heavy Drinking: The Myth of Alcoholism*, University of California Press, 1988) he claims that six subjects died in ten years in the control group that received abstinence-oriented psychotherapy. From this he concludes that controlled drinking "may prove to be a significantly more successful method than abstinence for at least some drinkers." It is true that psychotherapeutic approaches to alcoholism are seldom successful. I know from my experience as a consultant that abstinence programs run by psychotherapists can be disastrous. Once this is recognized, Fingarette's argument amounts to the claim that one inadequate program was

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

successful because fewer experimental subjects died in it than in another inadequate program—odd reasoning at best.

FINALLY, Fingarette disregards accumulated scientific research suggesting that no more than 1.6 percent of treated alcoholics can ever return to normal drinking. To urge alcoholics to try for a goal with a demonstrated failure rate of 98.4 percent is madness. Even the Sobells recommended abstinence as the primary goal in treating alcoholics. Despite Fingarette's claims, controlled drinking has been so disastrously ineffective as therapy that professionals in this country have totally abandoned it. Fingarette's critique of "the myth of alcoholism" comes tumbling down like a house of cards.

Fingarette's diatribe against Alcoholics Anonymous is also unpersuasive. Treatment programs based on AA principles, such as the Betty Ford Center, the Navy Alcohol Recovery Program, and the Employment Assistance Programs, have recovery rates up to 85 percent. It is true that AA reaches only a small percentage of alcoholics and is far from successful with all who join. But it is the best approach we have today; it merits support rather than attack from Fingarette and other self-designated "authorities."

When Fingarette criticizes the philosophical foundations of Alcoholics Anonymous, he lapses into caricature. Alcoholics Anonymous realizes quite as well as Fingarette that alcoholism has "psychological, social, cultural, economic, and even spiritual dimensions." In fact, every suggestion that Fingarette makes in his book for helping alcoholics recover is endorsed by Alcoholics Anonymous—with the lethal difference that AA recommends abstinence, while Fingarette advocates controlled drinking with tolerated binges. Although the members of AA believe that one drink may compel them to have another, they otherwise see alcoholism in the same terms as Fingarette—a fact Fingarette understandably chooses to disregard. In his excellent book, *The Alcoholics Anonymous Experience*, Milton Maxwell states that "AA sees alcoholism as an illness, symptomatic of a personality disorder. Its program is designed to get at the basic problem, that is, to bring about a change in personality." Years earlier, Bill Wilson, cofounder of AA, wrote that "anyone who knows the alcoholic personality by first-hand contact knows that no true 'alky' ever stopped drinking permanently without undergoing a profound personality change."

Finally, and perhaps most importantly, Fingarette's emphasis on the alcoholic's need to accept personal responsibility is platitudinous. "Alcoholics are not helpless; they can take control of their lives. In the last analysis, alcoholics must *want* to change and *choose* to change." Who would disagree? Not the medical profession and certainly not Alcoholics Anonymous—even though Fingarette accuses them of sanctioning the drinking of alcoholics by proclaiming their total lack of responsibility for their actions. Here again, Fingarette overwhelms the reader by his ability to misrepresent the truth.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

DOCTORS always expect that patients who are not totally psychotic or comatose will take due responsibility for their own cures. Likewise, far from freeing alcoholics from accountability, Alcoholics Anonymous stresses that they must take full responsibility for their behavior. Alcoholics, far from being freed of responsibility for past performance, whether drunk or sober, are expected to make amends for the wrongs of the past. While the AA group gives all the help it can to each member, one of its most important sayings is, "We will walk with you but we can't walk for you." If Fingarette had simply made this valid and important point about public policy—that alcoholism should not serve as a legal defense in either civil or criminal actions—he would have discovered that virtually all recovering alcoholics agree with him. The AMA specifically states that alcoholism is properly not a valid defense for civil and criminal violations of the law.

Fingarette has no trouble demanding responsibility of others, both alcoholics and nonalcoholics. He claims in his book that private hosts "should be encouraged to assume some responsibility, moral if not legal, in serving alcohol to their guests." Do crusades like his, which seem to urge alcoholics to drink, show any responsibility at all? While claiming that alcoholism is a myth, Fingarette does concede that "alcoholism is . . . profoundly harmful, both to the drinkers themselves and to others." I am convinced that his crusade will increase the damage to which he rightly points.

William Madsen is professor of anthropology at the University of California, Santa Barbara.

A Rejoinder to Madsen

HERBERT FINGARETTE

THE READER OF William Madsen's diatribe against me has been ill-served, because Madsen misrepresents both my personal qualifications and my arguments. He frequently says what is plainly untrue.

Before I address the substantive issues, his attacks on my qualifications and credibility demand response. Madsen says that I am "a layman . . . lacking all scientific credentials" who draws conclusions on the basis of "slipshod research" and "fiat." He claims that I am someone who has "completely misunderstood" and "badly misrepresented the pertinent scientific literature." These charges are extreme; the reader cannot be expected to trust what I say until they have been addressed.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

I am a professor of philosophy at the University of California at Santa Barbara. I have done research in the area of mental disabilities, alcoholism, and addiction for some forty years. I have published several books and a great many major research articles that have appeared in such leading journals as the *Harvard Law Review*, and in such leading scientific publications as the *British Journal of Addiction* and the annual *Research Advances in Drug and Alcohol Problems*. My research has been supported by the American Council of Learned Societies, the U.S. Drug and Alcohol Abuse Agency, and the Stanford Center for Advanced Study in the Behavioral Sciences, among others. I have been a consultant to the World Health Organization on alcoholism and addiction, and my work is quoted extensively in standard legal texts and textbooks for mental-health professionals. The U.S. Supreme Court has explicitly relied on my work, citing it as its sole scholarly authority at the crucial point in its landmark decision in the 1988 *Traynor* alcoholism case.

With this preamble, I can now address the substantive questions. Because of space constraints, I can touch on no more than a representative sample of Madsen's egregious misrepresentations.

MADSEN CLAIMS that the findings of the "soft" sciences of psychology and sociology constitute "practically all of the evidence" for my argument; the evidence I cite from the "hard" sciences—medicine and biology—is "tiny and insignificant." But of the three sections of my article that deal with the causes of alcoholism, two deal with straightforward biological issues and data, and only one with psychological and social causes. Madsen's disdain for "soft" sciences is odd indeed, for he himself is by training and profession a cultural anthropologist.

Madsen further asserts that "[Fingarette] dismisses . . . as irrelevant . . . the vast and significant literature on genetics and personality," the findings of Ralph Tarter being a particularly glaring omission. Yet I have studied, analyzed, and amply cited the literature on genetics and its relation to personality and behavior, including the work of Ralph Tarter. Furthermore, rather than dismissing the genetic studies of alcoholism as "irrelevant" (or inventing confused analogies between flowers and alcoholics, à la Madsen), I have said that the published studies constitute the most impressive biological evidence we have about alcoholism. I accept their results and quote their conclusions without quibble. But the data and conclusions of these studies have been only partially reported to the public, which has accordingly misunderstood them. This I tried to convey in my article, though without all the names and citations. My book *Heavy Drinking* contains a full discussion, and citations as well. Madsen knows my book; in fact, his article is a shortened and much toned-down version of a pamphlet he wrote attacking it.

Madsen's claim that my findings are based solely on the results of "highly artificial" experiments on the model of "rat research" is

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

equally ill-founded. I present *all* major types of evidence. I begin with observations in hospitals and in everyday life, not "rat research." All researchers, including Mark Keller, the former editor of the *Journal of Studies on Alcohol*, agree that alcoholics do often voluntarily abstain or drink in moderation. Several classic experiments by respected figures in alcohol research confirm my point and I cite them in my article and my book.

THE CLAIM that "Fingarette chiefly rests his case [concerning controlled drinking] on the 1972 report of Linda and Marc Sobell" is a red herring. Although I mention them in only one sentence, Madsen devotes more than one-fourth of his critique to attacking the Sobells. I do not use their work as evidence that controlled drinking is feasible. I mention the Sobells only to illustrate the bitter public attacks launched against researchers who publish evidence concerning the feasibility of controlled drinking. (I make the same use of the Sobells in my book.) Madsen's long and unreliable disquisition on the Sobells is misleading and irrelevant to my article.

Madsen complains that although I assert that hundreds of reports confirm the view that controlled drinking is a legitimate goal for alcoholics, I never identify them. Of course I don't identify these hundreds of reports in my article; space did not permit it. I do identify them in my book, however, providing ample elaboration and full citations.

According to Madsen, "[Fingarette] advocates controlled drinking with tolerated binges." Although Madsen implies that I "urge" alcoholics to drink, I certainly do not. I advocate no one goal or method. Rather, I stress the need to be pluralistic; no single goal or method should be expected to work for all people. The goal of total abstinence is rarely achieved. The success rates of controlled drinking are uncertain and harder to measure, but are also limited. (Madsen's figures, however, are at the extreme low end of published estimates.) Not dogma enforced by horror stories but open-mindedness and selectivity are called for. Such open-mindedness, and the resulting willingness to explore controlled drinking, prevails in other countries, including Canada and Great Britain, which are not dominated by our alcoholism and medical lobbies.

Madsen avers that I know "little about what constitutes a disease. Since no single cause has been discovered for alcoholism, he believes that it cannot be a disease." I have published technical books and articles dealing with the concept of disease for some thirty years. Madsen grossly misrepresents the use I make of the notion of "disease" in my article. There I say that the word "disease" as used "in public discussions *in the news media* . . . is usually taken to mean that alcoholism has a single biological cause" (emphasis added). I explore a variety of possible claims as to what "disease" might mean in order to demonstrate that none of them fits alcoholism.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

Madsen imputes to me the assertion that since drinking habits range from abstinence to chronic abuse, it is impossible to establish distinct categories of drinking, and hence alcoholism cannot be a disease. Madsen is right to recognize the absurdity of such an assertion. He is wrong, however, to attribute it to me. What I say on the subject is that a number of widely cited studies since the 1960s have examined Americans' drinking patterns, and that these studies confirm that individual drinkers neither develop along any consistent pattern, nor remain stable in a single pattern.

MADSEN CALLS me "the newest champion of the moral cause," but it is he, not I, who defines the controversy as moral versus medical. He insists that I "strongly advocate the moral model," though I never use the words and I reject everything he seems to mean by them. He quotes a Dr. Bean, who defines the "moral model"; then he puts her words into my mouth, implying that I accept her terms. In truth—contrary to Madsen's portrait of me—I am against simplistic views that alcoholism is the result of "immorality" or poor "impulse control." I am *for* examining alcoholism from all relevant perspectives—including the biological, psychological, sociocultural, moral, and spiritual viewpoints. I emphasize that our response should be compassionate but realistic.

The reader may well be wondering why there has been such a feverish attack on my article. Those acquainted with the alcoholism movement will not be surprised. They know the emotional intensity with which individuals associated with the movement greet my challenge. Deep personal involvement often makes a threat to doctrine seem like a threat to personal identity. And as with all powerful social movements, there are stereotypes of the "enemy." The believers know the sort of person the enemy "really" is, what the enemy "really" means, and the awful danger the enemy poses. Therefore they pay little serious attention to the enemy's actual argument and evidence. And characteristically, too, when I impute natural self-interested bias to these people because of the thousands of careers and billions of dollars at stake in the alcoholism-treatment industry, Madsen translates my words into diabolical terms and imputes to me charges that these people are "avaricious," "cynical," and "venal"—charges I have never made.

I respect the editors of *The Public Interest* for attempting to further public debate by publishing a reply to my admittedly controversial challenge to the doctrines and doings of the alcoholism movement. Intellectually responsible debates on these issues are going on—especially in the research literature. It is regrettable that William Madsen's heated polemic has made for a missed opportunity.

Herbert Fingarette is professor of philosophy at the University of California, Santa Barbara.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

CURRENT READING

Prison Reform . . .

Thanks to the intervention of the federal judiciary, civil liberties have been restored to the Iowa penitentiary system: the chief judge of the United States District Court for the Southern District of Iowa has held unconstitutional a state regulation permitting prison officials to keep certain pornographic magazines out of their domain.

As the fact-finding magistrate in the case recounted in horror, under the regulation "entire publications may be banned if they contain certain types of sexually explicit portrayals." As administered, the magistrate and the judge agreed, this regulation violated the Due Process clause of the Fourteenth Amendment; some magazines were banned for twelve months at a time instead of being reviewed each month, and prison officials banned entire issues rather than painstakingly edit the offending portions out of each copy. But even had they done so, the court made clear, they would still have violated the First Amendment. In addition, according to the court, the regulation was unconstitutionally vague; though it specified—not only with words but also with photographs—what material should be banned, different members of the prison Publication Review Committee sometimes reached different conclusions about particular magazines.

Iowa's heinous policy, it seems, caused substantial harm. In the magistrate's delicate words, "Some plaintiffs rely upon sexually explicit publications, similar to those which have been denied, for sexual release." Perhaps as a result, "All plaintiffs claim emotional distress and frustration over the monthly uncertainty of whether their publications would be delivered."

But the court's decision has ended Iowa's reign of terror. According to the *New York Times*, the Men's Reformatory in Anamosa—which has long permitted inmates to subscribe to "soft-core" magazines like *Playboy* and *Penthouse*—has now established an official lounge in which inmates with acceptable psychological and behavioral records can peruse their favorite hard-core pornography. (The lounge is quaintly called a "reading" room.)

Despite this penological reform, some Anamosa prisoners suspect that their rights are still being trampled. One convict complained to the *Times* that the presence of guards in the reading room prevented him from "enjoying" the pornography. Alert the ACLU! As the inmate hopefully observed, "Every dollar [prison

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

officials] spend fighting a lawsuit is a dollar they can't spend building a place to lock me up."

Of course, even if civil-liberties groups do not object to the guards in the reading room, their work is not yet done: most prisons still ban books about how to escape.

. . . And Reforming Prisoners

Parade magazine, the Sunday-newspaper supplement, reaches nearly 32 million homes, almost twice as many as *TV Guide*. For that reason, it may be among the most influential publications in America today. Hence its cover story of October 30, 1988, is particularly disturbing.

"With a population four times as great as ours," reads the opening teaser, "China has proportionately much less crime, fewer police and hardly any repeaters. What's the Chinese secret? It starts with a belief: Everyone can be reformed."

To judge from the article, written by Robert Elegant, the Chinese criminal-justice system is a model for the rest of the world. In the stirring final paragraphs Elegant quotes an American lawyer (the alliterative Pittman P. Potter) as saying, "Chinese society emphasizes amicable relationships and avoiding conflict," and concludes, "Maybe those traits could be useful in America."

How are these "amicable relationships" maintained? Elegant recounts the story of a thief who snatched an American's briefcase (contents: the remains of a single sandwich) one day in Canton. In response, "the crowd suddenly boiled like a tank of tropical fish at feeding time." Though the American—aware of the workings of Chinese justice—wanted the mob to let the thief go, he could not stop it from bringing its captive to the police. Because the thief had been previously convicted of another crime, he may well have been executed.

This sentence, Elegant concedes, may seem harsh "by Western standards." But "soft-hearted foreigners" have only themselves to blame: China has upped its use of the death penalty in response to a crime wave "brought on" in part by China's opening up to "the free and easy West."

Shooting petty criminals is not China's only contribution to penology. Without apparent disapproval, Elegant observes that "less than one percent of the 2 million criminals brought to trial throughout China have been acquitted." Soft-hearted foreigners, of course, might refer to "defendants" instead of "criminals."

Once caught, moreover, criminals are diligently "educated." By means of "ceaseless persuasion," law officers try to convince each to "repent sincerely" and become a "new person," "once again . . . a useful member of society." This tactic is illustrated by the case of one man who had embezzled $175; after "spen[ding] many hours with practiced interrogators who could tell a phony conversion almost by instinct," he "apologiz[ed] earnestly for the damage he'd

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

done to society." (By "society," Elegant helpfully explains, he meant "his fellow citizens.") The embezzler's prison sentence was then commuted to probation. The enlightened nature of such rehabilitation is made clear by the name of China's "reform-through-labor" camps.

To corroborate the wonders of Chinese rehabilitation, Elegant cites far-left movie director Bernardo Bertolucci's "brilliant" picture *The Last Emperor*—an almost equally uncritical look at Chinese brainwashing. Elegant fondly recalls the movie's portrayal of how, after the revolution, a prison warden manages "over a period of years to show the former emperor . . . that he has committed many crimes." In this way, "the evildoer" is led "back to the paths of righteousness."

Elegant is similarly upbeat about the conditions in Chinese prisons:

> China's greatest accomplishment, from the American point of view at least, may be the fact that it prevents prisons from becoming self-contained communities where inmates learn new criminal tricks. Beijing Municipal Prison, which was built in 1908, . . . is positively Dickensian in its grim appearance. Prisoners live 16 to a cell that might hold . . . at most four in a Western long-term prison. Working long hours at antiquated spinning machines, stamp presses, and machine tools, they produce socks, plastic shoes and towels. . . . Meanwhile, a detachment of special wardens works equally hard to show prisoners how they have erred and to teach them trades.

And what trades do prisoners learn? They are currently making souvenir socks, emblazoned with an image of Donald Duck, for the 1990 Asian Games.

But China does not stop at teaching convicts such marketable skills. It encourages "street committees"—which Elegant calls "civic organizations"—"to control crime before it occurs." As one pull-out quotation proclaims, "Street committees watch every inhabitant closely to prevent crime, and they handle many criminal cases themselves." The other "civic organizations" that Elegant praises—extra-judicial "reconciliation and mediation committees"—sound equally desirable.

"If things get really desperate," one prison warden brags, "we send for [the prisoner's] family—to persuade them and to shame them. It may take a long time, years even, but almost everyone finally reforms."

The Chinese way with crime and punishment is not without literary forebears. In one well-known novel, a government interrogator informs a prisoner that he intends "not merely to extract your confession, nor to punish you. Shall I tell you why we have brought you here? To cure you! To make you sane! Will you understand . . . that no one whom we bring to this place ever leave our hands uncured?. . . . We do not . . . destroy our enemies; we change them."

The novel in question, as you may have guessed, is *1984*.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED